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|--------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SOLICITATION, OFFER, AND AWARD | | 1. Caption ADAP and Medicaid Pharmacy Network Services | | Page of Pages 1 90 | |
| 2. Contract Number | 3. Solicitation Number DCHC-2008-B-1010 | 4. Type of Solicitation <input checked="" type="checkbox"/> Sealed Bid (IFB) <input type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source <input type="checkbox"/> Emergency | | 5. Date Issued | 6. Type of Market <input checked="" type="checkbox"/> Open <input type="checkbox"/> Set Aside Open Market with Set-Aside SBE Designated Category: |
| 7. Issued By: Office of Contracting and Procurement 441 4th Street, NW, Suite 700 South Washington, DC 20001 | | | 8. Address Offer to: Office of Contracting and Procurement 441 4th Street, NW, Suite 703 South, Bid Room Washington, DC 20001 | | |

NOTE: In sealed bid solicitations "offer" and "offeror" means "bid" and "bidder"

SOLICITATION

9. Sealed offers in original and na copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the bid counter located at 441 4th Street, NW, Suite 703S, Bid Room, Washington, DC until 7/11/08 local time 10:00am
(Hour) (Date)

CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in this solicitation.

| | | | | | | |
|-----------------------------|--------------------------------|-----------------------------|--------------|--|--|-----------------------------------------------------------------------------------|
| 10. For Information Contact | A. Name Jim Marshall | | B. Telephone | | | C. E-mail Address jim.marshall@dc.gov |
| | (Area Code) 202 | (Number) 724-4197 | (Ext) | | | |

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OFFER

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 120 calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.

| | | | | |
|---------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|------------------------------------------------|
| 13. Discount for Prompt Payment | <input type="checkbox"/> 10 Calendar days % | <input type="checkbox"/> 20 Calendar days % | <input type="checkbox"/> 30 Calendar days % | <input type="checkbox"/> _____ Calendar days % |
|---------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|------------------------------------------------|

| | | | | |
|---------------------------------------------------------------------------------------------------------|------------------|------|------------------|------|
| 14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION): | Amendment Number | Date | Amendment Number | Date |
| | | | | |
| | | | | |
| | | | | |

| | | | |
|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|---------------|----------------|
| 15A. Name and Address of Offeror ACS State Healthcare, LLC | 16. Name and Title of Person Authorized to Sign Offer/Contract | | |
| 15B. Telephone (Area Code) (Number) (Ext) | 15 C. Check if remittance address is different from above - Refer to Section G <input type="checkbox"/> | 17. Signature | 18. Offer Date |

AWARD (TO BE COMPLETED BY GOVERNMENT)

| | | |
|-----------------------------------|------------|----------------------------------|
| 19. Accepted as to Items Numbered | 20. Amount | 21. Accounting and Appropriation |
|-----------------------------------|------------|----------------------------------|

SECTION B
SUPPLIES OR SERVICES AND PRICE

B.1 The District of Columbia Department of Health (DOH) HIV/AIDS Administration (HAA) (the District) is seeking a Contractor with a centralized pharmacy network to distribute and dispense anti-retroviral and other approved HIV-related medications to eligible District residents living with HIV and enrolled in a qualifying DOH program.

B.2 The District contemplates award of an indefinite delivery indefinite quantity (IDIQ) type contract with fixed unit prices with cost reimbursement components.

B.3 IDIQ CONTRACT

This is an IDIQ contract for the supplies or services specified and effective for the period stated.

- a. Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering Clause described in G.10. The Contractor shall furnish to the District, when and if ordered, the supplies or services specified in the Schedule up to and including the maximum quantities provided in Section B.4. The District will order at least the minimum quantities provided in Section B.4. The District will issue one purchase order and task order at the start of the Contract to provide the funding for the estimated dollar value of orders to be placed in accordance with Sections G.10 of the contract for the current fiscal year's period of performance. Subject to the availability of funds, the District will issue an additional purchase order and task order to provide the funding for the estimated dollar value of orders to be placed in accordance with Sections G.10 of the contract for the next fiscal year's period of performance.
- b. There is no limit on the number of orders that may be issued. The District may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- c. Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and District's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective dates; provided, that the contractor shall not be required to make any deliveries under this contract after the contract's termination or expiration date.

B.4 PRICE SCHEDULE

B.4.1 BASE YEAR PERIOD OF PERFORMANCE
(Date of award through Twelve Months thereafter)

| Contract Line Item Number (CLIN) | Item Description | Price per Unit | Minimum Quantity | Minimum Total Price | Maximum Quantity | Maximum Total Price |
|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|------------------------------|-------------------------|----------------------------|-------------------------|----------------------------|
| 0001 | Dispensing Fee | | | | | |
| 0001AA | Dispensing Fee – ADAP and Medicaid Program Clients – Non-controlled substances as described in C.3 | \$ _____ Per Prescription | 5,000 | \$ _____ | 40,000 | \$ _____ |
| 0001AB | Dispensing Fee – ADAP Program Clients - Controlled substances as described in C.3 | \$ _____ Per Prescription | 5,000 | \$ _____ | 40,000 | \$ _____ |
| 0002 Cost Reimbursement Components | | | | | | |
| 0002AA | Reimbursement of controlled substance prescription costs as described in C.3 | | | | | Not to Exceed \$250,000 |
| 0002AB | Reimbursement of Payment of Co-payments /Deductibles not to exceed \$1,100 per prescription per eligible ADAP as described in C.3 | | | | | Not to Exceed \$500,000 |
| Base Year Period of Performance Totals | | | | \$ _____ | | \$ _____ |

B.4.2 OPTION YEAR ONE PERIOD OF PERFORMANCE
 (Date of award through Twelve Months thereafter)

| Contract Line Item Number (CLIN) | Item Description | Price per Unit | Minimum Quantity | Minimum Total Price | Maximum Quantity | Maximum Total Price |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|------------------------------|------------------|---------------------|------------------|-------------------------|
| 0101 | Dispensing Fee | | | | | |
| 0101AA | Dispensing Fee – ADAP and Medicaid Program Clients – Non-controlled substances as described in C.3 | \$ _____ Per Prescription | 5,000 | \$ _____ | 40,000 | \$ _____ |
| 0101AB | Dispensing Fee – ADAP Program Clients - Controlled substances as described in C.3 | \$ _____ Per Prescription | 5,000 | \$ _____ | 40,000 | \$ _____ |
| 0102 Cost Reimbursement Components | | | | | | |
| 0102AA | Reimbursement of controlled substance prescription costs as described in C.3 | | | | | Not to Exceed \$250,000 |
| 0102AB | Reimbursement of Payment of Co-payments /Deductibles not to exceed \$1,100 per prescription per eligible ADAP as described in C.3 | | | | | Not to Exceed \$500,000 |
| Option Year One Period of Performance Totals | | | | \$ _____ | | \$ _____ |

B.4.3 OPTION YEAR TWO PERIOD OF PERFORMANCE
 (Date of award through Twelve Months thereafter)

| Contract Line Item Number (CLIN) | Item Description | Price per Unit | Minimum Quantity | Minimum Total Price | Maximum Quantity | Maximum Total Price |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|------------------------------|------------------|---------------------|------------------|-------------------------|
| 0201 | Dispensing Fee | | | | | |
| 0201AA | Dispensing Fee – ADAP and Medicaid Program Clients – Non controlled substances as described in C.3 | \$ _____ Per Prescription | 5,000 | \$ _____ | 40,000 | \$ _____ |
| 0201AB | Dispensing Fee – ADAP Program Clients - Controlled substances as described in C.3 | \$ _____ Per Prescription | 5,000 | \$ _____ | 40,000 | \$ _____ |
| 0202 Cost Reimbursement Components | | | | | | |
| 0202AA | Reimbursement of controlled substance prescription costs as described in C.3 | | | | | Not to Exceed \$250,000 |
| 0202AB | Reimbursement of Payment of Co-payments /Deductibles not to exceed \$1,100 per prescription per eligible ADAP as described in C.3 | | | | | Not to Exceed \$500,000 |
| Option Year Two Period of Performance Totals | | | | \$ _____ | | \$ _____ |

B.4.4 OPTION YEAR THREE PERIOD OF PERFORMANCE
 (Date of award through Twelve Months thereafter)

| Contract Line Item Number (CLIN) | Item Description | Price per Unit | Minimum Quantity | Minimum Total Price | Maximum Quantity | Maximum Total Price |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------------|---------------------|------------------|-------------------------|
| 0301 | Dispensing Fee | | | | | |
| 0301AA | Dispensing Fee – ADAP and Medicaid Program Clients – Non-controlled substances as described in C.3 | \$ _____ Per Prescription | 5,000 | \$ _____ | 40,000 | \$ _____ |
| 0301AB | Dispensing Fee – ADAP Program Clients - Controlled substances as described in C.3 | \$ _____ Per Prescription | 5,000 | \$ _____ | 40,000 | \$ _____ |
| 0302 Cost Reimbursement Components | | | | | | |
| 0302AA | Reimbursement of controlled substance prescription costs as described in C.3 | | | | | Not to Exceed \$250,000 |
| 0302AB | Reimbursement of Payment of Co-payments /Deductibles not to exceed \$1,100 per prescription per eligible ADAP as described in C.3 | | | | | Not to Exceed \$500,000 |
| Option Year Three Period of Performance Totals | | | | \$ _____ | | \$ _____ |

B.4.5 OPTION YEAR FOUR PERIOD OF PERFORMANCE
 (Date of award through Twelve Months thereafter)

| Contract Line Item Number (CLIN) | Item Description | Price per Unit | Minimum Quantity | Minimum Total Price | Maximum Quantity | Maximum Total Price |
|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------------|---------------------|------------------|-------------------------|
| 0401 | Dispensing Fee | | | | | |
| 0401AA | Dispensing Fee – ADAP and Medicaid Program Clients – Non -controlled substances as described in C.3 | \$ _____ Per Prescription | 5,000 | \$ _____ | 40,000 | \$ _____ |
| 0401AB | Dispensing Fee – ADAP Program Clients - Controlled substances as described in C.3 | \$ _____ Per Prescription | 5,000 | \$ _____ | 40,000 | \$ _____ |
| 0402 Cost Reimbursement Components | | | | | | |
| 0402AA | Reimbursement of controlled substance prescription costs as described in C.3 | | | | | Not to Exceed \$250,000 |
| 0402AB | Reimbursement of Payment of Co-payments /Deductibles not to exceed \$1,100 per prescription per eligible ADAP as described in C.3 | | | | | Not to Exceed \$500,000 |
| Base Year Period of Performance Totals | | | | \$ _____ | | \$ _____ |

B.4.6 GRAND TOTAL

| Period of Performance | Minimum Total Price | Maximum Total Price |
|-------------------------------------------------|---------------------|---------------------|
| Base Period of Performance (B.4.1) | \$ _____ | \$ _____ |
| Option Year One Period of Performance (B.4.2) | \$ _____ | \$ _____ |
| Option Year Two Period of Performance (B.4.3) | \$ _____ | \$ _____ |
| Option Year Three Period of Performance (B.4.4) | \$ _____ | \$ _____ |
| Option Year Four of Performance (B.4.5) | \$ _____ | \$ _____ |
| Grand Total | \$ _____ | \$ _____ |

SECTION C SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE

The District of Columbia Department of Health (DOH) HIV/AIDS Administration (HAA) (the District) is seeking a Contractor with a centralized pharmacy network to distribute and dispense anti-retroviral and other approved HIV-related medications to eligible District residents living with HIV and enrolled in any of the following DOH programs:

- a. The AIDS Drug Assistance Program (ADAP);
- b. The ADAP Co-payment Assistance Program (ADAP Co-pay);
- c. The Medicaid Ticket to Work Demonstration Program;
- d. The Medicaid Expansion (1115 Waiver) Program; and
- e. Medicaid Fee For Service.

C.1.1 APPLICABLE DOCUMENTS

The following Applicable Documents are incorporated into the contract by this reference. The Contractor shall comply with the most recent and any future versions of all applicable Federal and District of Columbia laws, court orders, regulations, and guidelines related to the delivery of the contract requirements including the following Applicable Documents:

| Document # | Type of Document | Title | Version |
|------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 1 | D.C. Law | District of Columbia AIDS Act of 1986 http://app.doh.dc.gov/services/administration_offices/s_hpda/pdf/HIV_AIDS_specialized.pdf | 1986 |
| 2 | Federal Regulation | Ryan White Care Act, Title I and II of 2006 http://www.hab.hrsa.gov/tools/fiscal06/study1.html | 2006 |
| 3 | Federal Regulation | US Code of Federal Regulations Title 21 Food and Drugs, revised April 2002 http://www.uams.edu/rsc/Fed%20Regs/21CFR812.doc | April 2002 |
| 4 | Federal Regulation | Social Security Act, Title XIX http://www.ssa.gov/OP_Home/ssact/title19/1900.htm | April 2007 |
| 5 | Federal Law | Ryan White HIV/AIDS Treatment Modernization Act of 2006 http://thomas.loc.gov/cgi-bin/query/D?c109:1:./temp/~c1094YLEzs: | 2006 |

| Document # | Type of Document | Title | Version |
|------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 6 | Federal Regulation | US Code of Federal Regulations 42 § 440.120 http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=a4cfe023f417d37df28bb181c1fbb545&rgn=div8&view=text&node=42:4.0.1.1.9.1.109.14&idno=42 | Most Recent |

| Document # | Type of Document | Title | Version |
|------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 7 | DOH/CMS Documents | Department of Health Medical Assistance Administration HIV/AIDS 1115 Waiver Research and Demonstration Projects http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/03_Research&DemonstrationProjects-Section1115.asp | Most Recent |
| 8 | Federal Regulation | Title 47, Section 300ff-26 of the U.S. Code | Most Recent |
| 9 | DC Law | DC Health Occupations Regulations Act (HORA) | Most Recent |
| 10 | DOH/HAA Document | District of Columbia HIV/AIDS Epidemiology Annual Report 2007. http://doh.dc.gov/doh/frames.asp?doc=/doh/lib/doh/services/administration_offices/hiv_aids/pdf/epidemiology_annual_2007.pdf | Most Recent |

C.1.2 DEFINITIONS / ACRONYMS

The following definitions are applicable to this procurement:

- C.1.2.1 Access Points** – Contractor’s centralized network pharmacies where eligible Medicaid and ADAP clients can fill their antiretroviral and approved medications.
- C.1.2.2 ADAP** – AIDS Drug Assistance Program - Federally and State funded program authorized under Part B of the Ryan White CARE Act which provides free of charge FDA-approved medications to eligible low-income individuals living with HIV.
- C.1.2.3 ADAP Co-Payment Assistance Program** - Part of the ADAP program that covers the cost of co-payments and deductibles for persons living with HIV who have a portion of their medication costs covered by private insurance or Medicare Part D. The eligibility criteria for participation in this feature of the ADAP program, varies from the main program eligibility criteria.
- C.1.2.4 AIDS** – Acquired Immune Deficiency Syndrome - Disease is the result of severe damage to the body’s immune system through the destruction of T-cells. A clinical diagnosis of specific opportunistic infection(s) associated with the disease as well as a T-cell count under 200 cells per cubic milliliter of blood are required for an AIDS diagnosis. AIDS is considered the end stage of HIV infection.

- C.1.2.5 Antiretroviral** – Class of medications used specifically to bolster the immune system of a person living with HIV.
- C.1.2.6 AWP** – Average Wholesale Price, price charged to the average pharmacy by a drug wholesaler to purchase products.
- C.1.2.7 Centralized Pharmacy Network** – A group of pharmacies with a parent corporation that is responsible for complying with the requirements of this contract, including managing the distribution of medications to the individual pharmacy locations.
- C.1.2.8 CMS** – Centers for Medicare and Medicaid Services - Federal agency with regulatory oversight of Medicare and state Medicaid programs, including the D.C. Medical Assistance Administration program.
- C.1.2.9 Co-payment** – Out of pocket cost, such as deductibles, incurred by an eligible ADAP Co-Pay program client when obtaining medications.
- C.1.2.10 Controlled Substance** - Any item classified in Schedules I through V in Title 21, Chapter II of the Code of Federal Regulations.
- C.1.2.11 Deductible** – Initial out of pocket cost that an individual must assume prior to health insurance subsidizing the cost of health care, including prescription drugs.
- C.1.2.12 DOH** – Department of Health
- C.1.2.13 FDA** – US Food and Drug Administration
- C.1.2.14 HIV/AIDS Administration (HAA)** - Agency within the District of Columbia Department of Health responsible for administering HIV-related grants and services.
- C.1.2.15 Implementation Phase:** The phase of the contract beginning from date of award through no more than 60 days to provide the Contractor the time to properly equip the Contractor’s operations to successfully begin to deliver the required services.
- C.1.2.16 Medical Assistance Administration (MAA)** – Agency within the District of Columbia Department of Health responsible for providing health care services to indigent DC residents.
- C.1.2.17 Medicaid Expansion Demonstration Program** – A Medicaid waiver program to expand Medicaid eligibility for individuals living with HIV with income under 100% of the Federal Poverty Level.

- C.1.2.18 Medicaid Fee For Service** – The traditional Medicaid program for individuals not enrolled in managed care plans.
- C.1.2.19 Medicaid Ticket to Work Program** – A Medicaid demonstration program for individuals living with HIV/AIDS with income under 300% of the Federal Poverty Level who are working at least 40 hours each month.
- C.1.2.20 Medicare Part D** – Prescription drug program available to Medicare beneficiaries that often requires significant out of pocket costs such as deductibles, co-payments, and monthly premiums. All DC ADAP clients with Medicare are required to enroll in a Part D plan in order to access DC ADAP services.
- C.1.2.21 Non-control Substances** – Prescription and over the counter medications approved by the Food and Drug Administration for human consumption but not classified as a controlled substance (Excluded from Schedules I through V in Title 21, Chapter II of the Code of Federal Regulations.).
- C.1.2.22 Operational Phase** - The phase of the contract beginning after the Implementation Phase and when after review and approval of the District, the Contractor shall begin to deliver the required services.
- C.1.2.23 PBM** - Pharmacy Benefits Manager, entity that pharmacies send prescription requests through in order to determine insurance eligibility and approval prior to dispensing medications.
- C.1.2.24 Prior Authorization Program** - Process that requires clients to be pre-approved through their insurance carrier before specific medications can be dispensed at the pharmacy.
- C.1.2.25 Washington Metropolitan Area** -The District of Columbia and the surrounding counties in suburban Maryland and Northern Virginia.
- C.2 BACKGROUND**
- C.2.1 ADAP Drug Assistance Program (ADAP) and ADAP Co-payment Assistance Program**
- C.2.1.1** DOH provides pharmaceutical assistance to eligible District residents pursuant to the authority set forth in the Ryan White Treatment Modernization Act of 2006, Part B (Applicable Document #5). The District receives grant funds to provide medications to treat HIV disease. ADAP contracts with a network of pharmacies to distribute HIV-related medications on the District’s ADAP formulary (Attachment J.7) to enrolled clients. This program is authorized by Title 47, Section 300ff-26

of the U.S. Code (Applicable Document #8). The ADAP program covers the cost of drugs through two pharmacy payment methodologies: (1) an inventory replenishment model for medications that are non-controlled substances; and (2) monetary reimbursement at the prevailing Medicaid rate for medications that are controlled substances. The current pharmacy reimbursement rate for Medicaid is Average Wholesale Price minus 10% plus a \$4.50 dispensing fee. DOH currently purchases all non-controlled substances directly via contract with the U.S. Department of Defense (DOD).

C.2.1.2 ADAP also provides assistance with pharmacy co-payments and deductibles to eligible clients with private health insurance or Medicare Part D coverage for medications on the District of Columbia's ADAP formulary (Attachment J.7) at the time the prescription is filled. After billing the private insurance or Medicare, the pharmacy bills the co-payment or deductible portion monthly to DOH.

C.2.2 Medicaid Ticket to Work Demonstration Program, Medicaid Expansion (1115 Waiver) Program, and Medicaid Fee For Service

C.2.2.1 The DC Medicaid State Plan includes two Medicaid waiver /demonstration programs that are specific to people living with HIV. These programs provide Medicaid coverage to District residents living with HIV who would not otherwise be eligible for Medicaid under current Title XIX (Applicable Document #4) statute. The two (2) special Medicaid programs that provide coverage for people living with HIV are:

- a. Ticket to Work Demonstration Program to maintain independence and employment, implemented in September 2002, and
- b. Medicaid Expansion (1115 Waiver) Program, implemented in January 2005 (Applicable Document #7).

C.2.2.2 DOH provides medical assistance via the DC Medicaid program to eligible District residents pursuant to the authority set forth in the Social Security Act, Title XIX (Applicable Document #4). This program enables the District to receive Federal Financial assistance for Medicaid, and for other purposes, and was approved December 27, 1967 (81 Stat. 774; D.C. Code, sec. 1-359(b)), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997. Under the Medicaid program, the District reimburses contracted or certified providers for health services, including prescription drugs, for eligible individuals.

C.2.3 The services to result from this solicitation and the resulting contract are solely concerned with the prescription drug coverage feature of this program and cover primarily the cost of antiretroviral medications. The

number of persons enrolled in the Program is contingent upon the District's ability to maximize drug purchase discounts. The less expensive the drugs, the more drugs DOH can purchase and the more clients can be enrolled in the program.

C.3 REQUIREMENTS

The Contractor shall provide at a minimum the following required services in support of the DOH HAA's ADAP and Medicaid programs described above. The Contractor shall perform the required services in accordance with all applicable federal and District laws and regulations (C.1.1).

C.3.1 CENTRALIZED PHARMACY NETWORK

The Contractor shall at a minimum provide or perform the following relating to the development and maintenance of a centralized pharmacy network to provide the required services.

C.3.1.1 Provider Agreements, Licenses, Insurance, and Regulatory Approvals

The Contractor shall maintain provider agreements, licenses, insurance, and required Federal and District approvals to distribute approved medications to eligible clients for each of the Contractor's centralized network pharmacies (C.3.1.2). The Contractor's required licenses and certifications shall include at a minimum the following:

- a. A current District of Columbia Pharmacy and Controlled Substance Registration;
- b. A Drug Enforcement Administration Controlled Substance Registration; and
- c. Pharmacy malpractice insurance as described in Section I.X.

C.3.1.2 Minimum Number, Geographical Locations, and Capacity

The Contractor shall provide and maintain, at a minimum, participating network pharmacies in the quantity, locations, service delivery capacity, and capabilities as described below to ensure and maximize access to approved medications for HIV clients enrolled in the District's ADAP and Medicaid programs:

- a. Twenty (20) Medicaid-participating pharmacies within the District of Columbia as access points geographically disbursed as follows:
 - 1 Maintain at a minimum two (2) Medicaid-participating pharmacies in Ward 7

- 2 Maintain at a minimum two (2) Medicaid-participating pharmacies in Ward 8
 - 3 Maintain at a minimum one (1) Medicaid-participating pharmacy in Wards 1, 2, 3, 4, 5, and 6
 - 4 Maintain at a minimum fifteen (15) additional Medicaid participating pharmacies in the District of Columbia
- b. Of the participating pharmacies described C.3.1.2 a above, maintain at a minimum of three (3) Medicaid-participating pharmacies that maintain hours of operation on Saturdays and Sundays;
 - c. Of the participating pharmacies described C.3.1.2 a above, provide drug delivery services to the client's home or office from a minimum of ten (10) contractor pharmacy locations at no charge to the client.
 - d. Maintain participating pharmacies that are close in proximity to clients as described in the District of Columbia HIV/AIDS Epidemiology Annual Report 2007, Map of Number of Living AIDS Cases by Ward, pg. 84 (Applicable Document #10) health care providers, and public transportation;
 - e. Provide pharmacies with foreign language capabilities to serve clients more effectively. The Contractor shall comply with the District's Language Access Act (Attachment J.4); and
 - f. Include in the network at contract initiation any specific pharmacies requested by the DOH HAA based on client access needs.

C.3.1.2.1 The Contractor shall ensure notification of the COTR of all centralized pharmacy network changes at least 30 days in advance of any pharmacy being removed from the network. The Contractor shall provide the Centralized Network Pharmacy Updates in accordance with F.3.

C.3.2 STAFFING, SUPERVISION, AND ORGANIZATIONAL STRUCTURE

The Contractor shall at a minimum provide the staffing, supervision, and organizational structure to maintain the successful delivery of the required services including at a minimum the following:

C.3.2.1 Pharmacists - Licensing and Qualifications

The Contractor shall employ and maintain pharmacists licensed as required in the DC Health Occupations Regulations Act (HORA) (Applicable Document #9) to manage all pharmacy staff. In addition, the Contractor shall ensure that staff at each of the centralized pharmacy networks is competent to perform the duties assigned.

C.3.2.2 Other Staff

The Contractor shall provide additional staff necessary to fulfill the requirements of the contract.

C.3.2.3 Staffing Pattern

The Contractor shall develop, provide, and maintain a staffing pattern at each pharmacy network sufficient to ensure client wait time to fill prescriptions at each of the Contractor's centralized network pharmacies (C.3.1) does not exceed thirty (30) minutes.

C.3.2.3.1 The Contractor shall monitor and maintain the average wait time experienced by clients at each of the Contractor's centralized network pharmacies based on client and pharmacy staff surveys. The Contractor shall develop and provide the COTR a quarterly Client Wait Time Report in accordance with F.3.

C.3.2.4 Staff Training and Development

The Contractor shall ensure that pharmacist (C.3.2.1) and other pharmacy staff (C.3.2.2) performing services at the Contractor's centralized network pharmacies attend DOH sponsored training. The DOH-HAA sponsored training will occur quarterly at a time to be agreed upon by the Contractor and the District through the COTR and will typically last four (4) hours.

C.3.2.5 Organizational Structure

The Contractor shall maintain and provide an organizational structure to successfully deliver the required services to include the identification of pharmacist (C.3.2.1) and other staff (C.3.2.2) at each of the Contractor's centralized network pharmacies.

C.3.2.5.1 The Contractor shall provide the COTR an organizational chart on a quarterly basis. The Contractor's organizational chart shall be provided in accordance with F.3 and shall indicate at a minimum the following:

- a. The Contractor's centralized network pharmacies (C.3.1.2);
- b. Identification of the Contractor's centralized network pharmacies that maintain hours of operation on Saturdays and Sundays (C.3.1.2 b);
- c. Identification of the Contractor's centralized network pharmacies to provide drug delivery services to the client's home or office (C.3.1.2 c);

- d. Identification of the Contractor's centralized network pharmacies providing foreign language capabilities (C.3.1.2 d).
- e. Pharmacist(s) at each of the Contractor's centralized network pharmacies (C.3.2.1); and
- f. Number of other staff at each of the Contractor's centralized network pharmacies (C.3.2.2);

C.3.3 INVENTORY AND DELIVERIES

The Contractor shall at a minimum provide the following in support of the inventory and delivery requirements:

C.3.3.1 Inventory

The Contractor's shall ensure that pharmacies participating in the Contractor's centralized pharmacy network maintain sufficient on hand inventory of antiretroviral medications to fill "on demand" requests for antiretroviral medications at least 95% of the time.

C.3.3.1.1 The Contractor's participating network pharmacies shall maintain an inventory to dispense antiretroviral and non-controlled substances medications (C.3.4) from their own stock. The DOH will replenish the Contractor's supply of antiretroviral.

C.3.3.1.2 The Contractor's participating pharmacies shall dispense controlled substance prescriptions (C.3.4) from their own stock and shall bill DOH for the cost of the drugs. The Contractor shall replenish and maintain the necessary inventory to fulfill the required service delivery, DOH will not replenish the network pharmacy's stock for controlled substances.

C.3.3.2 Deliveries

C.3.3.2.1 The Contractor shall identify a centralized drug delivery site located within the Washington Metropolitan area and is located within 20 miles of the District of Columbia where the DOH Pharmacy Warehouse will deliver weekly medications.

C.3.3.2.2 The Contractor shall provide drug delivery services to the client's home or office from a minimum of ten (10) contractor pharmacy locations at no charge to the client.

C.3.4 DISPENSING

The Contractor shall adhere to all applicable Federal and District of Columbia laws and policies regarding distribution of medications and shall provide at a minimum the following dispensing services in support of the required services.

C.3.4.1 Eligible Clients

The Contractor shall dispense approved HIV-related medications listed in the DC ADAP formulary (Attachment J.7) to eligible District residents only who are enrolled in DC ADAP or DC Medicaid Ticket to Work, Medicaid Expansion or Medicaid Fee-for-Service programs.

C.3.4.1.1 The Contractor shall verify primary health insurance, Medicare Part D coverage, and ADAP Co-pay enrollment status through the Contractor's Pharmacy Benefit Management (PBM) System (C.3.6.2) for every client prior to filling a prescription.

C.3.4.1.2 The Contractor shall ensure that approved medications (C.3.4.2) are dispensed free of charge only to those eligible ADAP and Medicaid clients (C.3.4.1) including ADAP Co-pay enrollees. The Contractor shall ensure that under no circumstances are medications dispensed to anyone not eligible and enrolled in the ADAP programs.

C.3.4.2 Approved Medications

C.3.4.2.1 The Contractor shall provide medications to eligible clients (C.3.4.1) in accordance with the following:

- a. ADAP – full coverage for all medications approved in the ADAP formulary (Attachment J.7);
- b. ADAP Co-payment Assistance Program (ADAP Co-pay) – co-pay and deductible coverage for ADAP formulary (Attachment J.7) medications partially covered by private insurance or Medicare Part D;
- c. Medicaid Ticket to Work demonstration program – full coverage for all FDA approved antiretroviral medications only;
- d. Medicaid Expansion (1115 waiver) program – full coverage for all FDA approved antiretroviral medications only; and
- e. Medicaid Fee For Service – full coverage for all FDA approved antiretroviral medications only.

C.3.5 PHARMACY SERVICES

C.3.5.1 The Contractor shall at a minimum offer the following pharmacy services to all eligible DOH clients (C.3.4.1) upon receipt of medication:

- a. Client counseling,
- b. Refill compliance,
- c. Drug interaction monitoring;
- d. Medication usage; and
- e. HIV adherence counseling.

C.3.5.2 The Contractor shall monitor clients' prescription history and use due diligence to determine and avoid contraindicated drug combinations. The Contractor's network pharmacists shall contact a client's physicians via telephone anytime a question arises based on either the pharmacist's or client's review of the client's HIV medication regimen.

C.3.6 PHARMACY NETWORK RELATED SERVICES

C.3.6.1 Work Plan

The Contractor shall prepare and submit to the COTR for review and approval a detailed work plan within five (5) days of contract award. The Contractor's work plan shall address, at a minimum, the major tasks to be completed, timeline for completion, and the responsible parties for the following:

- a. Identification and description of the Contractor's Centralized Pharmacy Network as described in C.3.1 including the following:
 - 1. Copy of Agreements and current licensing requirements for each participating pharmacy (C.3.1.1)
 - 2. Name and address of each pharmacy participating in the Contractor's Centralized Pharmacy Network (C.3.1.2)
 - 3. Minimum Number, Geographical Locations, and Capacity (C.3.1.2 a);
 - 4. Identification of the Contractor's participating pharmacies that maintain hours of operation on Saturdays and Sundays(C.3.1.2 b);
 - 5. Identification of the Contractor's participating pharmacies to provide drug delivery services to the client's home or office (C.3.1.2 c) and the Contractor's Policies and Procedures to fulfill the delivery requirements;

6. Foreign language capabilities and compliance with the District's Language Access Act (Attachment J.4) (C.3.1.2 d); and
 7. Policies and procedures to add pharmacies to the Contractor's centralized participating pharmacy network (C.3.1.2 g).
- b. Staffing Information (C.3.2) including the following:
 1. Identification and licenses for Pharmacist (C.3.2.1)
 2. Staffing Pattern (C.3.2.2 and C.3.2.3)
 3. Organizational Structure (C.3.2.5)
 - c. Inventory centralized delivery site (C.3.2.2) and delivery procedures;
 - d. Pharmacy Services
 1. Description of the Contractor's MIS system (C.3.6.2) including maintenance of the Contractor's MIS system and identification of the Contractor's PBM;
 2. Description of the Contractor's Prior Authorization Policies and Procedures;
 3. Evaluation (C.3.6.5); and
 4. Reporting Requirements (C.3.6.6).

C.3.6.2 Management Information System – Pharmacy Benefit Manager

The Contractor shall maintain a management information system (MIS) to support the delivery of the required services. The Contractor's MIS shall provide or include at a minimum the following:

C.3.6.2.1 Pharmacy Benefit Manager (PBM)

The Contractor shall utilize a PBM for insurance eligibility determination and for prior authorizations (C.3.6.3) of all DOH program prescription requests based on the coverage. The Contractor's PBM shall provide or maintain at a minimum the following capacity and capability:

- a. Integrate with and interface the District's Medicaid Management Information System (MMIS) for the purpose of receiving and transmitting applicable information.
- b. Maintain online the ADAP formulary file (Attachment J.7) and the ADAP eligibility file for claims adjudication purposes;
- c. Maintain compliance with HIPAA Regulations (Attachment J.3); and

- d. Produce and support the reporting requirements described in C.3.6.6.

C.3.6.2.2 The Contractor shall provide identified ADAP staff real time access to the following features of the Contractor's online PBM system for the following purposes:

- a. Client eligibility table so that ADAP staff may enroll, recertify, and disenroll clients;
- b. Claims processing data at all levels, including client, practitioner and pharmacy, so that ADAP staff can perform system queries that are user definable and printable;
- c. Data system queries that are user definable and printable;
- d. Other specialized functions by ADAP staff, as directed by the COTR, to include but not be limited to:
 - 1. Overriding standard dispensing rules on a one-time basis for a specific client, and
 - 2. Exercising approval authority for drugs requiring prior authorization.

C.3.6.2.3 In the event of an emergency or unusual incident, including a breach of confidentiality or any IT system compromise associated with services supported by this contract, the Contractor shall notify the COTR by telephone and electronic mail within thirty (30) minutes of the time the Contractor first becomes aware of the emergency or unusual incident. The Contractor shall follow-up with a detailed written report within two (2) business days of such knowledge.

C.3.6.3 Prior Authorizations

The Contractor shall participate in any prior authorization programs for special or limited use medications that may exist or be developed by DOH.

C.3.6.3.1 The Contractor shall develop and provide prior authorization policies and procedures -to ensure that medications requiring prior authorization are not dispensed without prior approval from the ADAP office.

C.3.6.4 Client Confidentiality

The Contractor and its participating pharmacies shall maintain strict confidentiality of all client information and shall not use that information in connection with any other matters, nor shall any such information be disclosed to any other firm or corporation in accordance with the District of Columbia's policy regarding the sharing of client information. The

Contractor will be required to sign and abide by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Business Associate's Agreement which shall be incorporated into the final contract (Section H).

C.3.6.5 Evaluation

The Contractor shall at the request of the COTR participate in DOH-HAA evaluation activities that require the collection and analysis of data related to program operations and may be used to modify the program design or delivery system.

C.3.6.5.1 The Contractor shall conduct a Customer Service/Satisfaction Survey at least annually. The Contractor's Customer Service/Satisfaction Survey shall address at a minimum the following:

- a. client wait time;
- b. medication availability; and
- c. Pharmacy Services (C.3.5.1) provided including
 1. Client counseling
 2. Refill compliance
 3. Drug interaction monitoring
 4. Medication usage
 5. HIV adherence counseling.

C.3.6.6 Reporting Requirements

The Contractor shall develop and provide the following ADAP reports for the review and approval of the COTR (Medicaid shall obtain their required reports from the Medicaid Pharmacy Benefit Manager:

C.3.6.6.1 Weekly Reports

The Contractor's PBM shall provide the following custom weekly reports:

- a. Dispensed Drug by Provider;
- b. Dispensed Drug by Provider Insurance Co-Pay Program;
- c. Drug Utilization with Pricing;
- d. Drug Utilization with Pricing Insurance Co-Pay Program;
- e. Drug Utilization without Pricing; and
- f. Drug Utilization without Pricing Insurance Co-Pay Program.

C.3.6.6.2 Monthly Reports

The Contractor's PBM shall provide the following custom monthly reports:

- a. Client Activity Report;
- b. Claims Summary Report;
- c. Member Claims Report;
- d. Administrative Report;
- e. Pharmacy Location Summary Report;
- f. Dispensed Drugs by Provider;
- g. Claims Summary;
- h. Dispensed Drugs by Provider Insurance Co-Pay Program;
- i. Claims Summary Insurance Co-Pay Program; and
- j. Exceptions Report.

C.3.6.6.3 Quarterly Reports

The Contractor's PBM shall provide the following custom quarterly reports:

- a. Drug Utilization Report (DRV043) and
- b. ADAP Client Quarterly Report
- c. Client Wait Time Report

C.3.6.6.4 Annual Report

The Contractor's PBM shall provide an annual report providing the aggregate data reported in the weekly (C.3.6.6.1) monthly (C.3.6.6.2), and quarterly (C.3.6.6.3) reports described above.

C.3.6.7 Meeting Requirements

The Contractor shall attend quarterly meetings with the COTR and DOH staff.

C.3.7 Implementation

C.3.7.1 The Contractor shall develop an Implementation Plan to address the Contractor's implementation of the required services. The Contractor's Implementation Plan shall be submitted for the review and approval of the COTR in accordance with F.3 and shall include or address at a minimum the following:

- a. A timeline of no more than 60 days for the Contractor to begin the delivery of required services including major tasks and sub-tasks;
- b. Contractor's Work Plan (C.3.61);
- c. A clear description of staff responsibilities for implementing the services required; and
- d. Sufficient resources to carry out the Implementation Plan.

C.3.7.2 The Contractor shall provide all Implementation Phase expenses incurred for facilities, furniture, computer equipment, telecommunication equipment, postage and any other costs and expenses required to implement the required services.

C.3.7.3 The Contractor shall fully cooperate with HAA in its Readiness Review (H.11.6), which shall be conducted prior to beginning of the operational phase of the Contract. Contractor shall fully comply with HAA's readiness review procedures, including providing HAA or its designee access to documents, staff, and facilities.

**SECTION D
PACKAGING AND MARKING**

- D.1** The packaging and marking requirements for the resultant contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007 (Attachment J.1).

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SECTION E
INSPECTION AND ACCEPTANCE

- E.1** The inspection and acceptance requirements for the resultant contract shall be governed by clause number seven (7), Inspection of Services, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007, (Attachment J.1).
- E.2** The COTR will conduct the inspection and acceptance of services provided.
- E.3** DOH-HAA will visit all participating pharmacies at least annually.
- E.4** DOH-HAA may also conduct random client surveys.

E.5 **RIGHT TO ENTER PREMISES**

The Department of Health HIV-AIDS Administration or any authorized representative of the District of Columbia, the U.S. Department of Health and Human Services, the U.S. Comptroller General, the U.S. General Accounting Office, or their authorized representatives will, at all reasonable times, have the right to enter the Contractor's premises or such other places where duties under this contract are being performed to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. The Contractor and all subcontractors shall provide reasonable access to all facilities and assistance to the District and Federal representatives. All inspections and evaluations shall be performed in such a manner as will not unduly delay the services.

**SECTION F
DELIVERIES OR PERFORMANCE**

F.1 TERM OF CONTRACT

The term of the contract shall be for one year from date of award as specified on page one (1) of the contract.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of the Contract for a period of four (4), one-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

F.2.2 If the District exercises this option, the extended contract shall be considered to include this option provision.

F.2.3 The price for the option period shall be as specified in the contract extension.

F.2.4 The total duration of the Contract, including all options under this clause, shall not exceed five (5) years.

F.3 DELIVERABLES

The Contractor shall perform its tasks and produce the required Deliverables for the review and approval of the COTR by the due dates presented in the table that follows. The Contractor shall provide one (1) hard copy and one (1) electronic copy of each deliverable and provide revisions to Deliverables in accordance with the written comments provided by the COTR.

| Deliverable No. | Deliverable | Due Date |
|------------------------|-----------------------------------------------------------------------|------------------------------------------------------------|
| 1 | Centralized Pharmacy Network Updates as described in C.3.1.2 g | At least 30 days prior to the effective date of the update |
| 2 | Map of Centralized Pharmacy Network as described in C.3.1.2.1 | Date of Contract Award and Quarterly thereafter |
| 3 | Client Wait Time Report as described in C.3.2.3.1 | Quarterly |
| 4 | Organizational Chart as described in C.3.2.5.1 | Date of Contract Award and Quarterly thereafter |
| 5 | Work Plan as described in C.3.6.1 | Within five (5) days of contract award |
| 6 | Emergency Recovery Plan as described in C.3.6.2.3.1 | As Needed within 24 hours of occurrence |
| 7 | Prior Authorization Policies and Procedures as described in C.3.6.3.1 | Within five (5) days of contract award |
| 8 | Customer Service Satisfaction Survey as described in C.6.5.1 | Annually |
| 9 | Weekly Reports as described in C.3.6.6.1 | Weekly beginning within five (5) days of operational phase |
| 10 | Monthly Reports as described in C.3.6.6.2 | Monthly beginning one (1) month of operational phase |
| 11 | Quarterly Reports as described in C.3.6.6.3 | Quarterly beginning one (1) month of operational phase |
| 12 | Annual Report as described C.3.6.6.4 | Annually |
| 13 | Implementation Plan as described in C.3.7.1 | Within five days of contract award |

F.3.1 FIRST SOURCE AGREEMENT

The Contractor shall submit any reports that are required pursuant to the 51% of District Resident New Hires Requirements and First Source Employment Agreement clause under Section H.5 as a deliverable. The Contractor will not be paid the final payment if the report is not submitted as part of the deliverable.

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SECTION G
CONTRACT ADMINISTRATION DATA

G.1 INVOICE PAYMENT

G.1.1 The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for services performed and accepted less any discounts, allowances or adjustments provided for in this contract.

G.1.2 The District will pay the Contractor on or before the 30th day after receiving authorization by the COTR for ADAP program prescriptions as described below:

- a. ADAP
 - 1. A dispensing fee for each non-controlled substance prescription.
 - 2. A dispensing fee for each controlled substance prescription
 - 3. Reimbursement for controlled substances at the prevailing Medicaid rate less 10% using the forms and processes as directed by the COTR.
- b. ADAP Co-Pay
 - 1. A dispensing fee for ADAP formulary (Attachment J.7) medications partially covered by private insurance or Medicare Part D
 - 2. Co-pay and deductible coverage billed to HAA ADAP using the forms and processes as directed by the COTR. (Note: The client's private health insurance company or Medicare Part D, whichever is applicable must be billed first. This is a wrap around benefit.)
- c. Medicaid Ticket to Work
 - 1. A dispensing fee for each antiretroviral prescription processed.
- d. Medicaid Expansion (1115 Waiver) Program
 - 1. A dispensing fee for each antiretroviral prescription processed.
- e. Medicaid Fee for Service
 - 1. A dispensing fee for each antiretroviral prescription processed.

G.1.3 The dispensing fee shall be billed to the DOH-MAA in accordance with current Medicaid claims submission protocol for pharmacy service.

G.2 INVOICE SUBMITTAL

G.2.1 The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in this contract. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer (CFO) with a concurrent copy to the Contracting Officer's Technical Representative (COTR) specified in G.7 below.

The address of the CFO is:

Name: Department of Health
Office of the Chief Financial Officer (CFO)
Address: 825 North Capitol Street, NE, Suite 5100
Washington D.C. 20002
Telephone: 202-442-9069

G.2.2 To constitute a proper invoice, the Contractor shall submit the following information on the invoice:

- a. Contractor's name, Federal tax ID, DUNS number and invoice date (Contractors are encouraged to date invoices as close to the date of mailing or transmittal as possible.);
- b. Contract number, block number two (2) and Purchase Order number, Assignment of an invoice number by the Contractor is also recommended;
- c. Description, price, quantity and the date(s) that the supplies/services were actually delivered and/or performed.
- d. Other supporting documentation or information, as required by the contracting officer;
- e. Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- f. Name, title, phone number of person preparing the invoice;
- g. Name, title, phone number and mailing address of person (if different from the person identified in (G.2.2.f) above to be notified in the event of a defective invoice); and
- h. Authorized signature

G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

G.3.1 For contracts subject to the 51% District Residents New Hires Requirement and First Source Employment Agreement (Attachment J.9), final request for payment must be accompanied by the report or a waiver of compliance discussed in Section H.5.5.2.

G.3.2 No final payment shall be made to the Contractor until the CFO has received the Contracting Officer’s final determination or approval of waiver of the Contractor’s compliance with 51% District Residents New Hires Requirement and First Source Employment Agreement.

G.4 METHOD OF PAYMENT

The District will pay the Contractor monthly.

G.5 ASSIGNMENT OF CONTRACT PAYMENTS

G.5.1 In accordance with 27 DCMR, 3250, unless otherwise prohibited by this contract, the Contractor may assign funds due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution

G.5.2 Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

G.5.3 Notwithstanding an assignment of money claims pursuant to authority contained in the contract, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

Pursuant to the instrument of assignment dated _____,
make payment of this invoice to _____
(name and address of assignee).

G.6 THE QUICK PAYMENT CLAUSE

G.6.1 Interest Penalties to Contractors

G.6.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 et seq., for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

- a. the 3rd day after the required payment date for meat or a meat product;
- b. the 5th day after the required payment date for an agricultural commodity; or

- c. the 15th day after the required payment date for any other item.

G.6.1.2 Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

G.6.2 **Payments to Subcontractors**

G.6.2.1 The Contractor must take one of the following actions within 7 days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under a contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b. Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

G.6.2.2 The Contractor must pay any lower-tier subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

- a. the 3rd day after the required payment date for meat or a meat product;
- b. the 5th day after the required payment date for an agricultural commodity; or
- c. The 15th day after the required payment date for any other item.

G.6.2.3 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

G.6.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.7 CONTRACTING OFFICER (CO)

Contracts may be entered into and signed on behalf of the District Government only by contracting officers. The address and telephone number of the Contracting Officer is:

James H. Marshall
Contracting Officer
Office of Contracting and Procurement
441 4th Street, NW, Room 700 South
Washington, D.C. 20001
202-724-4197 (P)
202 727-0245 (F)

G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

G.8.1 The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract, notwithstanding provisions contained elsewhere in this Contract.

G.8.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the Contracting Officer, or pursuant to specific authority otherwise included as part of this Contract.

G.8.3 In the event the Contractor effects any change at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

G.9 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

G.9.1 The Contracting Officers Technical Representative (COTR) will have the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

G.9.1.1 Keeping the Contracting Officer (CO) fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

G.9.1.2 Coordinating site entry for Contractor personnel, if applicable;

G.9.1.3 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts

and progress is satisfactory and commensurate with the rate of expenditure;

- G.9.1.4** Reviewing and approving invoices of deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and
- G.9.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoices/vouchers.
- G.9.2** The address and telephone number of the Contracting Officer Technical Representative is:
- Tanya Ehrmann
Department of Health HIV-AIDS Administration
64 New York, Ave., 5th Floor
Washington D.C. 20002
Phone 202 671-4815
Fax 202 673-4365
E-mail tanya.ehrmann@dc.gov
- G.9.3** It is understood and agreed, in particular, that the COTR shall NOT have the authority to:
- G.9.3.1** Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments, or modifications;
- G.9.3.2** Grant deviations from or waive any of the terms and conditions of the contract;
- G.9.3.3** Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract, or authorize the expenditure of funds by the Contractor;
- G.9.3.4** Change the period of performance; or
- G.9.3.5** Authorize the furnishing of District property, except as specified under the contract.
- G.9.4** The Contractor may be held fully responsible for any change not authorized in advance, in writing, by the Contracting Officer, and may be denied compensation or other relief for any additional work performed that is not so authorized, any may also be required, at no additional cost to

the District, to take all corrective action necessitated by reason of the unauthorized changes.

G.10 ORDERING CLAUSE

G.10.1 Any supplies and services to be furnished under this contract must be ordered by issuance of delivery orders or task orders by the Contracting Officer. Such orders may be issued during the term of this contract.

G.10.2 All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of a conflict between a delivery order or task order and this contract, the contract shall control.

G.10.3 If mailed, a delivery order or task order is considered "issued" when the District deposits the order in the mail. Orders may be issued by facsimile or by electronic commerce methods.

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SECTION H SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

H.1.1 For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

H.1.1.1 At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

H.1.2 The Contractor shall negotiate an Employment Agreement with the DOES for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified applicants, trainees, and other workers in the implementation of employment goals contained in this clause.

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No.: 2005-2103 Rev. No 5, dated May 8, 2008, issued by the U.S. Department of Labor in accordance with the Service Contract Act (41 U.S.C. 351 et seq.) and incorporated herein as Attachment J.2 of this solicitation. The Contractor shall be bound by the wage rates for the term of the contract. If an option is exercised, the Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.3 PUBLICITY

The Contractor shall at all times obtain the prior written approval from the Contracting Officer before it, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

H.4 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR designated in subsection G.9 who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code § 2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

H.5.1 The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code, sec. 2-219.01 et seq. (“First Source Act”).

H.5.2 The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, (Attachment J.9) in which the Contractor shall agree that:

- a. The first source for finding employees to fill all jobs created in order to perform this contract shall be the Department of Employment Services (“DOES”); and
- b. The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register.

H.5.3 The Contractor shall submit to DOES, no later than the 10th each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) verifying its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

- a. Number of employees needed;
- b. Number of current employees transferred;
- c. Number of new job openings created;
- d. Number of job openings listed with DOES;
- e. Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
- f. Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
 1. Name;
 2. Social Security number;
 3. Job title;
 4. Hire date;
 5. Residence; and
 6. Referral source for all new hires.

H.5.4 If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

H.5.5 With the submission of the Contractor's final request for payment from the District, the Contractor shall:

- a. Document in a report to the Contracting Officer its compliance with the Section H.5.4 of this clause; or
- b. Submit a request to the Contracting Officer for a waiver of compliance with Section H.5.4 and include the following documentation:
 1. Material supporting a good faith effort to comply;
 2. Referrals provided by DOES and other referral sources;
 3. Advertisement of job openings listed with DOES and other referral sources; and
 4. Any documentation supporting the waiver request pursuant to Section H.5.6.

H.5.6 The Contracting Officer may waive the provisions of Section H.5.4 if the Contracting Officer finds that:

- a. A good faith effort to comply is demonstrated by the Contractor;
- b. The Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is

performed inside the Washington Standard Metropolitan Statistical Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpepper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.

- c. The Contractor enters into a special workforce development training or placement arrangement with DOES; or
- d. DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.

H.5.7 Upon receipt of the contractor's final payment request and related documentation pursuant to Sections H.5.5 and H.5.6, the Contracting Officer shall determine whether the Contractor is in compliance with Section H.5.4 or whether a waiver of compliance pursuant to Section H.5.6 is justified. If the Contracting Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer shall, within two business days of making the determination forward a copy of the determination to the Agency Chief Financial Officer and the COTR.

H.5.8 Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to Section H.5.5, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in the contract any decision of the Contracting Officer pursuant to this Section H.5.8.

H.5.9 The provisions of Sections H.5.4 through H.5.8 do not apply to nonprofit organizations.

H.6 PROTECTION OF PROPERTY

The Contractor shall be responsible for any damage to the building, interior, or their approaches in delivering equipment covered by this contract.

H.7 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

During the performance of the contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful

to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. 12101 et seq.

H.8 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded program and activities. See 29 U.S.C. 794 et seq.

H.9 CONTRACTOR'S RESPONSIBILITIES

H.9.1 STAFFING

The Contractor shall provide sufficient staff to successfully perform the required services.

H.9.1.1 Diversion, Reassignment Key Personnel

The key personnel specified in the contract, Section C.3.1.2.1.1 is considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the Contractor shall notify the Contracting Officer at least thirty calendar days in advance and shall submit justification (including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall obtain written approval of the Contracting Officer for any proposed substitution of key personnel.

Please insert the names of the key personnel below:

H.9.2 MANAGEMENT INFORMATION SYSTEM

The Contractor shall provide the necessary management information systems required to support and complete the requirements described in C.3.

H.9.3 CONFIDENTIALITY OF RECORDS

H.9.3.1

The Contractor shall treat all records as confidential and must use reasonable care to protect that confidentiality in compliance with Federal and District regulations. Any use of data for purposes other than those completing the duties under this Contract including the sale or offering for sale of data is prohibited.

- H.9.3.2** The Contractor shall require its staff to sign a confidentiality statement. The Contractor will be liable for any fines, financial penalties, or damages imposed on the District as a result of the Contractor's systems, staff, subcontractors or other agents causing a breach of confidentiality.
- H.9.3.3** A breach of confidentiality is a breach of the Contract and will constitute grounds for Contract termination and prosecution to the fullest extent permissible by law.
- H.9.3.4** **Use of Information and Data**
- H.9.3.4.1** The District agrees to maintain, and to cause its employees, agents or representatives to maintain on confidential basis information concerning the Contractor's relations and operations as well as any other information compiled or created by Contractor which is proprietary to Contractor and which Contractor identifies as proprietary to the District in writing.
- H.9.4** **OTHER CONTRACTORS**
- H.9.4.1** The Contractor shall not commit or permit any act, which will interfere with the performance of work by another District Contractor or by any District employee.
- H.9.4.2** If another Contractor is awarded a future contract for performance of the required services, the Contractor shall cooperate fully with the District and the new Contractor in any transition activities, which the Contracting Officer deems necessary during the term of the contract.
- H.9.5** **COPELAND "ANTI-KICKBACK" ACT (18 U.S.C. 874 AND 40 U.S.C. 276C)**
- H.9.5.1** In accordance with 45 CFR §74 Appendix A (2) (Applicable Document 6), all contracts and sub-grants related to any facility utilized under this Contract in excess of \$2,000 for construction or repair awarded by the Contractor and subcontractors shall include a provision complying with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874, as supplemented by Department of Labor regulations, 29 CFR 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States."
- H.9.5.2** Each Contractor and subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, complete or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Contractor or subcontractor shall report all suspected or reported violations to CMS.

H.9.6 CLEAN AIR ACT (42 U.S.C. 7401 ET SEQ.) AND THE FEDERAL WATER POLLUTION CONTROL ACT AS AMENDED (33 U.S.C. 1251 ET SEQ.)

H.9.6.1 In accordance with 45 CFR 74 Appendix A (6), contracts and sub-grants of amount in excess of \$100,000 shall contain a provision that requires the Contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, Pollution Control Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq.

H.9.6.2 Violations shall be reported to the HHS and the appropriate Regional Office of the Environmental Protection Agency. The Contractor shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR 15).

H.9.7 BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)

H.9.7.1 In accordance with 45 CFR Appendix A (7), Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352.

H.9.7.2 Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Contractor.

H.9.8 DEBARMENT AND SUSPENSION (E.O.S 12549 AND 12689)

In accordance with 45 CFR 74 Appendix A (8), certain contracts shall not be made to parties listed on the non-procurement portion of the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and Contractors declared ineligible under statutory authority other than E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold (\$100,000) shall provide the required certification regarding their exclusion status and that of their principals prior to contract award.

H.9.9 INTELLECTUAL PROPERTY

The Contractor shall comply with CMS' grantor agency requirements and regulations pertaining to reporting and patient rights and of CMS requirements and regulations pertaining to copyrights and rights in data.

H.9.10 ENERGY EFFICIENCY

The Contractor shall recognize mandatory standards and policies related to energy efficiency which are contained in the District's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-165, 42 U.S.C. § 6-201 et seq.).

H.9.11 WAY TO WORK AMENDMENT ACT OF 2006

H.9.11.1 Except as described in H.9.13. 8 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 9, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*) ("Living Wage Act of 2006"), for contracts for services in the amount of \$100,000 or more in a 12-month period.

H.9.11.2 The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the OCP website at www.ocp.dc.gov.

H.9.11.3 The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

H.9.11.4 The Department of Employment Services may adjust the living wage annually and the OCP will publish the current living wage rate on its website at www.ocp.dc.gov.

H.9.11.5 The Contractor shall provide a copy of the Fact Sheet attached as J.12 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.12 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

H.9.11.6 The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the contract.

H.9.11.7 The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.*

H.9.11.8 The requirements of the Living Wage Act of 2006 do not apply to:

- (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- (2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
- (4) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
- (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;
- (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));
- (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in Section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and

(10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

H.9.11.9 The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

H.10 HIPAA COMPLIANCE

H.10.1 PURPOSE

This HIPAA Compliance Clause template is a guide for assisting the health care components of the District of Columbia, a hybrid entity with covered and non-covered business activities, to comply with the business associate contract requirements of the implementing regulations issued by the U.S. Department of Health and Human Services, Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”) and Security Standards for the Protection of Electronic Protected Health Information (the “Security Rule”), 45 C.F.R. Parts 160, 162 and 164) under Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). This HIPAA Compliance Clause’s contract terms contain the “satisfactory assurance” required by the Privacy Rule and Security Rule to ensure the integrity and confidentiality of protected health information (“PHI”), including electronic protected health information (“EPI”), that a business associate may create or receive for or from the District of Columbia Department of Health (DOH).

H.10.2 APPLICABILITY

This HIPAA Compliance Clause and the contract terms therein represent the minimal contractual language and baseline agreement for binding each of DOH’s business associates. A “Business Associate” is any person or organization that DOH engages to perform or assist in performing functions or activities that involve the use or disclosure of PHI and EPI created or received for or from DOH or that involves the electronic transmission of transactions for which the U.S. Department of Health and Human Services has established standards. A “Business Associate” is also any person or organization that provides legal, actuarial, accounting, consulting, data aggregation, management, administration, accreditation, or financial services to or for DOH and receives PHI and EPI from DOH or another business associate of DOH.

H.10.3 COVERED ENTITY

DOH is a “Covered Entity” as that term is defined in the Privacy and Security Rules and [*insert business associate name*], as a recipient of Protected Health Information and/or Electronic Protected Health Information from DOH is a “Business Associate” as that term is defined in the HIPAA Privacy and Security Rules.

H.10.4 DEFINITIONS

H.10.4.1 Administrative Safeguards mean the administrative actions, policies, and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the Covered Entity's workforce in relation to the protection of that information.

H.10.4.2 Business Associate means a person or entity, who performs, or assists in the performance of a function or activity on behalf of a Covered Entity or an organized health care organization in which the Covered Entity participates, involving the use or disclosure of individually identifiable health information, other than in the capacity of a workforce member of such Covered Entity or organization. A business associate is also any person or organization that provides, other than in the capacity of a workforce member of such Covered Entity, legal, actuarial, accounting, consulting, data aggregation, management, administration, accreditation, or financial services to or for the Covered Entity and receives individually identifiable health information from a Covered Entity or another business associate on behalf of a Covered Entity. In some instances, a Covered Entity may be a business associate of another Covered Entity.

H.10.4.3 Covered Entity means a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 C.F.R. Parts 160 and 164 of the Privacy and Security Rules. Covered Entity is also referred to as Covered Agency within this HIPAA Compliance Clause. With respect to this HIPAA Compliance Clause, Covered Entity shall also include the designated health care components -of a hybrid entity.

H.10.4.4 Data Aggregation means, with respect to Protected Health Information created or received by a business associate in its capacity as the business associate of a Covered Entity, the combining of such Protected Health Information by the business associate with the Protected Health Information received by the business associate in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective covered entities.

H.10.4.5 Designated Record Set means a group of records maintained by or for the Covered Entity that is:

- a. The medical records and billing records about individuals maintained by or for a covered health care provider;
- b. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- c. Used, in whole or in part, by or for the Covered Entity to make decisions about individuals.

H.10.4.6 **HIPAA** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, codified at 42 USCA 1320d, et.seq. and its implementing regulations at 45 C.F.R. Parts 160, 162, and 164.

H.10.4.7 **Electronic** media means:

- a. Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
- b. Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.
- c. Electronic Protected Health Information means Protected Health Information which is transmitted by Electronic Media (as defined herein) or maintained in Electronic Media.
- d. Health Care means care services, or services, or supplies related to the health of an individual. Health care includes, but is not limited to, the following:
- e. Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and
- f. Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.

- H.10.4.8 Health Care Components** means a component or a combination of components of a hybrid entity designated by a hybrid entity in accordance with 45 C.F.R. § 164.105(a)(2)(iii)(C). Health Care Components must include non-covered functions that provide services to the covered functions for the purpose of facilitating the sharing of Protected Health Information with such functions of the hybrid entity without business associate agreements or individual authorizations.
- H.10.4.9 Health Care Operations** shall have the same meaning as the term “health care operations” in 45 C.F.R. § 164.501.
- H.10.4.10 Hybrid Entity** means a single legal entity that is a Covered Entity and whose business activities include both covered and non-covered functions, and that designates health care components in accordance with 45 C.F.R. § 164.105(a)(2)(iii)(C). A Hybrid Entity is required to designate as a health care component, any other components of the entity that provide services to the covered functions for the purpose of facilitating the sharing of Protected Health Information with such functions of the hybrid entity without business associate agreements or individual authorizations.
- H.10.4.11 Individual** means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- H.10.4.12 Individually Identifiable Health Information** is information that is a subset of health information, including demographic information collected from an individual, and;
- a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - b. Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - c. That identifies the individual; or
 - d. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- H.10.4.13 National Provider Identifier (NPI) Rule** means the Standard Unique Health Identifier for Healthcare Providers; Final Rule at 45 C.F.R. Part 162.
- H.10.4.14 Physical Safeguards** means the security measures to protect a Covered Entity's electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.

- H.10.4.15** **Privacy Official** means the person within the Office of Healthcare Privacy and Confidentiality designated by the District of Columbia, a Hybrid Entity, who is responsible for developing, maintaining, implementing and enforcing the District-wide Privacy Policies and Procedures, and for overseeing full compliance with the Privacy Rule, and other applicable federal and District of Columbia privacy laws.
- H.10.4.16** **Privacy Officer** means the person designated by the Privacy Official or one of the District of Columbia's designated health care components, who is responsible for enforcing the provisions of the District's Privacy policies and procedures as well as overseeing full compliance with the Covered Agency's Privacy Policies and Procedures, the Privacy Rule, and other applicable federal and District of Columbia privacy laws. The Covered Agency's privacy officer will follow the guidance of the District's Privacy Official, and shall be responsive to and report to the District's Privacy Official.
- H.10.4.17** **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- H.10.4.18** **Protected Health Information** means individually identifiable health information that is:
- a. Transmitted by electronic media;
 - b. Maintained in electronic media; or
 - c. Transmitted or maintained in any other form or medium;
 - d. Limited to the information created or received by the Business Associate from or on behalf of the Covered Entity; and
 - e. Excluding information in the records listed in subsection (2) of the definition in 45 C.F.R. §160.103.
- H.10.4.19** **Record** shall mean any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the Covered Entity.
- H.10.4.20** **Required By Law** shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- H.10.4.21** **Secretary** means the Secretary of the United States Department of Health and Human Services or his or her designee.
- H.10.4.22** **Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

- H.10.4.23** **Security Official** shall mean the person within the Office of Healthcare Privacy and Confidentiality designated by the District of Columbia, a Hybrid Entity, who is responsible for developing, maintaining, implementing and enforcing the District-wide Security policies and procedures as required by the Security Rule and oversee full compliance the District's Security policies and procedures, as well as other applicable federal and District of Columbia security law.
- H.10.4.24** **Security Officer** means the person designated by the Security Official or one of the District of Columbia's designated health care components, who is responsible for enforcing the provisions of the District Security Rule policies and procedures as well as overseeing full compliance with the Covered Agency's Security Policies and Procedures, the Security Rule, and other applicable federal and District of Columbia security law(s). The Covered Agency's security officer will follow the guidance of the District's Security Official, and shall be responsive to and report to the District's Security Official.
- H.10.4.25** **Security Rule** means the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164.
- H.10.4.26** **Technical Safeguards** means the technology and the policies and procedures for its use that protect electronic protected health information and control access.
- H.10.4.27** **Workforce** means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or business associate, is under the direct control of such entity, whether or not they are paid by the Covered Entity or business associate.
- H.10.5** **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**
- H.10.5.1** The Business Associate agrees not to use or disclose Protected Health Information and Electronic Protected Health Information other than as permitted or required by this HIPAA Compliance Clause or as Required By Law.
- H.10.5.2** The Business Associate agrees to use commercially reasonable efforts and appropriate safeguards to maintain the security of the Protected Health Information and Electronic Protected Health Information and to prevent use or disclosure of such Protected Health Information other than as provided for by this Compliance Clause.
- H.10.5.3** The Business Associate agrees to establish procedures for mitigating, and to mitigate to the extent practicable, any deleterious effects that are known to the Business Associate of a use or disclosure of Protected Health

Information and Electronic Protected Health Information by the Business Associate in violation of the requirements of this Compliance Clause.

- H.10.5.4** The Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of the Protected Health Information and Electronic Protected Health Information not permitted or required by this HIPAA Compliance Clause to the District Privacy Official or agency Privacy Officer immediately, but no later than (10) days from the time the Business Associate becomes aware of such unauthorized use or disclosure.
- H.10.5.5** The Business Associate agrees to ensure that any workforce member or any agent, including a subcontractor, agrees to the same restrictions and conditions that apply through this Compliance Clause with respect to Protected Health Information and Electronic Protected Health Information received from the Business Associate, Protected Health Information and Electronic Protected Health Information created by the Business Associate, or Protected Health Information and Electronic Protected Health Information received by the Business Associate on behalf of the Covered Entity.
- H.10.5.6** The Business Associate agrees to provide access, at the request of the Covered Entity or an Individual, at a mutually agreed upon location, during normal business hours, and in a format as directed by the District Privacy Official or agency Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws, rules and regulations, to Protected Health Information in a Designated Record Set, to the Covered Entity or an Individual, within five (5) business days of the request to facilitate the District's compliance with the requirements under 45 C.F.R. §164.524.
- H.10.5.7** The Business Associate agrees to make any amendment(s) to the Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 as directed by the District Privacy Official or agency Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws within five (5) business days of the directive in order to facilitate the District's compliance with the requirements under 45 C.F.R. §164.526.
- H.10.5.8** The Business Associate agrees to use the standard practices of the Covered Entity to verify the identification and authority of an Individual who requests the Protected Health Information in a Designated Record Set of a recipient of services from or through the Covered Entity.
- H.10.5.9** The Business Associate agrees to record authorizations and log such disclosures of Protected Health Information and Electronic Protected Health Information and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual

for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and applicable District of Columbia laws, rules and regulations.

- H.10.5.10** The Business Associate agrees to provide to the Covered Entity or an Individual, within five (5) business days of a request at a mutually agreed upon location, during normal business hours, and in a format designated by the District Privacy Official or agency Privacy Officer and the duly authorized Business Associate workforce member, information collected in accordance with Paragraph (i) of this Section above, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and Electronic Protected Health Information in accordance with 45 C.F.R. § 164.528, and applicable District of Columbia laws, rules and regulations.
- H.10.5.11** The Business Associate agrees to make internal practices, books, and records, including policies and procedures, and Protected Health Information, relating to the use and disclosure of Protected Health Information received from the Business Associate, or created, or received by the Business Associate on behalf of the Covered Entity, available to the Covered Entity, or to the Secretary, within five (5) business days of their request and at a mutually agreed upon location, during normal business hours, and in a format designated by the District Privacy Official or agency Privacy Officer and the duly authorized Business Associate workforce member, or in a time and manner designated by the Secretary, for purposes of the Secretary in determining compliance of the Covered Entity with the Privacy Rule and Security Rule.
- H.10.5.12** The Business Associate may aggregate Protected Health Information in its possession with the Protected Health Information of other Covered Entities that Business Associate has in its possession through its capacity as a Business Associate to said other Covered Entities provided that the purpose of such aggregation is to provide the Covered Entity with data analyses to the Health Care Operations of the Covered Entity. Under no circumstances may the Business Associate disclose Protected Health Information of one Covered Entity to another Covered Entity absent the explicit written authorization and consent of the Privacy Officer or a duly authorized workforce member of the Covered Entity.
- H.10.5.13** Business Associate may de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b). Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this HIPAA Compliance Clause.

H.10.6 PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE

H.10.6.1 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Contract, provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if same activity were performed by the Covered Entity or would not violate the minimum necessary policies and procedures of the Covered Entity.

H.10.6.2 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

H.10.6.3 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may disclose Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate, provided that the disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used, or further disclosed, only as Required By Law, or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it has knowledge that the confidentiality and security of the information has been breached.

H.10.6.4 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use Protected Health Information and Electronic Protected Health Information to provide Data Aggregation services to the Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

H.10.6.5 Business Associate may use Protected Health Information and Electronic Protected Health Information to report violations of the Law to the appropriate federal and District of Columbia authorities, consistent with 45 C.F.R. § 164.502(j)(1).

H.10.7 ADDITIONAL OBLIGATIONS OF THE BUSINESS ASSOCIATE

H.10.7.1 Business Associate shall submit a written report to the Covered Entity that identifies the files and reports that constitute the Designated Record Set of the Covered Entity. Business Associate shall submit said written report to the Privacy Officer no later than thirty (30) days after the commencement of the HIPAA Compliance Clause. In the event that Business Associate

utilizes new files or reports which constitute the Designated Record Set, Business Associate shall notify the Covered Entity of said event within thirty (30) days of the commencement of the file's or report's usage. The Designated Record Set file shall include, but not be limited to the identity of the following:

- a. Name of the Business Associate of the Covered Entity;
- b. Title of the Report/File;
- c. Confirmation that the Report/File contains Protected Health Information (Yes or No);
- d. Description of the basic content of the Report/File;
- e. Format of the Report/File (Electronic or Paper);
- f. Physical location of Report/File;
- g. Name and telephone number of current member(s) of the workforce of the Covered Entity or other District of Columbia Government agency responsible for receiving and processing requests for Protected Health Information; and
- h. Supporting documents if the recipient/personal representative has access to the Report/File.

H.10.7.2 Business Associate must provide assurances to the (enter Covered Entity or organizational sub-part name here) that it will continue to employ sufficient administrative, technical and physical safeguards, as described under the Security Rule, to protect and secure (the Covered Entity's) EPHI entrusted to it. These safeguards include:

- a. The Business Associate agrees to develop, maintain, implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that the Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity.
- b. The Business Associate agrees to ensure that any agents or subcontractors of the Business Associate also agree to implement the appropriate security safeguards.
- c. The Business Associate agrees to report to the Covered Entity any security incident of which it becomes aware, including any attempts to access EPHI, whether those attempts were successful or not.
- d. This Business Associate Agreement may be terminated if the Covered Entity determines that the business associate

has materially breached the agreement, consistent with the terms and conditions outlined in Section 9, Term and Termination.

- e. The Business Associate agrees to make all policies and procedures, and documents relating to security, available to the Secretary of HHS for the purposes of determining the Covered Entity's compliance with the Privacy and Security Rules.
- f. This agreement continues in force for as long as the Business Associate retains any access to the (*name of Covered Entity*) EPHI.

H.10.7.3 The Business Associate's responsibilities under the National Provider Identifier Rule will be determined by the Covered Entity before May 23, 2007.

H.10.8 SANCTIONS

Business Associate agrees that its workforce members, agents and subcontractors who violate the provisions of the Privacy Rule, the Security Rule or other applicable federal or District of Columbia privacy law will be subject to discipline in accordance with Business Associate's District Personnel Manual and applicable collective bargaining agreements. Business Associate agrees to impose sanctions consistent with Business Associate's personnel policies and procedures and applicable collective bargaining agreements with respect to persons employed by it. Members of the Business Associate Workforce who are not employed by Business Associate are subject to the policies and applicable sanctions for violation of District of Columbia Privacy and Security policies and procedures as set forth in this Compliance Clause. In the event Business Associate imposes sanctions against any member of its workforce, agents and subcontractors for violation of the provisions of the Privacy and Security Rules or other applicable federal or District of Columbia Privacy and Security laws, regulations, and policies and procedures, the Business Associate shall inform the District Privacy and Security Officials or the agency Privacy and Security Officers of the imposition of sanctions.

H.10.9 OBLIGATIONS OF THE COVERED ENTITY

H.10.9.1 The Covered Entity shall notify the Business Associate of any limitation(s) in its Notice of Privacy Practices of the Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect the use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate.

H.10.9.2 The Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to the use or disclosure of Protected Health Information and Electronic Protected Health Information, to the extent that such changes may affect the use or disclosure of Protected Health Information by the Business Associate.

H.10.9.3 The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information and Electronic Protected Health Information that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate.

H.10.10 PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request the Business Associate to use or disclose Protected Health Information and Electronic Protected Health Information in any manner that would not be permissible under the Privacy Rule and the Security Rule if done by the Covered Entity.

H.10.11 REPRESENTATIONS AND WARRANTIES

The Business Associate represents and warrants to the Covered Entity:

- a. That it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this HIPAA Compliance Clause and it, its employees, agents, subcontractors, representatives and members of its workforce are licensed and in good standing with the applicable agency, board, or governing body to perform its obligations hereunder, and that the performance by it of its obligations under this HIPAA Compliance Clause has been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws;
- b. That it, its employees, agents, subcontractors, representatives and members of its workforce are in good standing with the District of Columbia, that it, its employees, agents, subcontractors, representatives and members of its workforce will submit a letter of good standing from the District of Columbia, and that it, its employees, agents, subcontractors, representatives and members of its workforce have not been de-barred from being employed as a contractor by the federal government or District of Columbia;

- c. That neither the execution of this HIPAA Compliance Clause, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. The Business Associate represents and warrants to the Covered Entity that it will not enter into any agreement the execution or performance of which would violate or interfere with this HIPAA Compliance Clause;
- d. That it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition;
- e. That all of its employees, agents, subcontractors, representatives and members of its workforce, whose services may be used to fulfill obligations under this HIPAA Compliance Clause are or shall be appropriately informed of the terms of this HIPAA Compliance Clause and are under legal obligation to the Business Associate, by contract or otherwise, sufficient to enable the Business Associate to fully comply with all provisions of this HIPAA Compliance Clause. Modifications or limitations that the Covered Entity has agreed to adhere to with regards to the use and disclosure of Protected Health Information and Electronic Protected Health Information of any individual that materially affects or limits the uses and disclosures that are otherwise permitted under the Privacy Rule and Security Rule will be communicated to the Business Associate, in writing, and in a timely fashion;
- f. That it will reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this Agreement;
- g. That neither the Business Associate, nor its shareholders, members, directors, officers, agents, subcontractors, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or District healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or District law (including without limitation following a plea of *nolo contendere* or participation in a first offender deferred

adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or District healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, District or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. The Business Associate further agrees to notify the Covered Entity immediately after the Business Associate becomes aware that any of the foregoing representations and warranties may be inaccurate or may become incorrect.

H.10.12 TERM AND TERMINATION

H.10.12.1 Term. The requirements of this HIPAA Compliance Clause shall be effective as of the date of the contract award, and shall terminate when all of the Protected Health Information and Electronic Protected Health Information provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is confidentially destroyed or returned to the Covered Entity within five (5) business days of its request, with the Protected Health Information returned in a format mutually agreed upon by and between the Privacy and Security Officials and/or Privacy and Security Officers or their designees, when applicable, and the appropriate and duly authorized workforce member of the Business Associate; or, if it is infeasible to return or confidentially destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section and communicated to the appropriate District personnel, whether the Privacy and Security Officials or Privacy and Security Officers or their designees, when applicable.

H.10.12.2 Termination for Cause. Upon the Covered Entity's knowledge of a material breach of this HIPAA Compliance Clause by the Business Associate, the Covered Entity shall either:

- a. Provide an opportunity for the Business Associate to cure the breach or end the violation and terminate the Contract if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity;

- b. Immediately terminate the Contract if the Business Associate breaches a material term of this HIPAA Compliance Clause and a cure is not possible; or
- c. If neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

H.10.12.3 Effect of Termination

- a. Except as provided in paragraph (ii) of this section, upon termination of the Contract, for any reason, the Business Associate shall return in a mutually agreed upon format or confidentially destroy all Protected Health Information received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity within five (5) business days of termination. This provision shall apply to Protected Health Information that is in the possession of ALL subcontractors, agents or workforce members of the Business Associate. The Business Associate shall retain no copies of Protected Health Information and Electronic Protected Health Information in any media form.
- b. In the event that the Business Associate determines that returning or destroying the Protected Health Information and Electronic Protected Health Information is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make the return or confidential destruction infeasible. Upon determination by the agency Privacy and Security Officer that the return or confidential destruction of the Protected Health Information is infeasible, the Business Associate shall extend the protections of this HIPAA Compliance Clause to such Protected Health Information and Electronic Protected Health Information and limit further uses and disclosures of such Protected Health Information and Electronic Protected Health Information to those purposes that make the return or confidential destruction infeasible, for so long as the Business Associate maintains such Protected Health Information and Electronic Protected Health Information. The obligations outlined in Section 2. Obligations and Activities of Business Associate will remain in force to the extent applicable.

H.10.13 MISCELLANEOUS

- H.10.13.1 Regulatory References.** A reference in this HIPAA Compliance Clause to a section of HIPAA, including the Privacy Rule or the Security Rule means the section as in effect or as amended.
- H.10.13.2 Amendment.** The Parties agree to take such action as is necessary to amend this HIPAA Compliance Clause from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule and HIPAA. Except for provisions required by law as defined herein, no provision hereof shall be deemed waived unless in writing and signed by duly authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this HIPAA Compliance Clause.
- H.10.13.3 Survival.** The respective rights and obligations of the Business Associate under Section 9. Term and Termination of this HIPAA Compliance Clause and Sections 9 and 20 of the Standard Contract Provisions for use with the District of Columbia Government Supply and Services Contracts, effective April 2003, shall survive termination of the Contract.
- H.10.13.4 Interpretation.** Any ambiguity in this HIPAA Compliance Clause shall be resolved to permit the Covered Entity to comply with applicable federal and District of Columbia laws, rules and regulations, and the Privacy Rule and Security Rule, and any requirements, rulings, interpretations, procedures, or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable federal and District of Columbia laws, rules and regulations shall supersede the Privacy Rule and Security Rule if, and to the extent that they impose additional requirements, have requirements that are more stringent than or provide greater protection of patient privacy or the security or safeguarding of Protected Health Information and Electronic Protected Health Information than those of HIPAA and its Privacy Rule and Security Rule.
- H.10.13.5** The terms of this HIPAA Compliance Clause amend and supplement the terms of the Contract, and whenever possible, all terms and conditions in this HIPAA Compliance Clause are to be harmonized. In the event of a conflict between the terms of the HIPAA Compliance Clause and the terms of the Contract, the terms of this HIPAA Compliance Clause shall control; provided, however, that this HIPAA Compliance Clause shall not supersede any other federal or District of Columbia law or regulation governing the legal relationship of the Parties, or the confidentiality of records or information, except to the extent that the Privacy Rule preempts those laws or regulations. In the event of any conflict between the provisions of the Contract (as amended by this HIPAA Compliance Clause) and the Privacy Rule and Security Rule, the Privacy Rule and Security Rule shall control.

- H.10.13.6** *No Third-Party Beneficiaries.* The Covered Entity and the Business Associate are the only parties to this HIPAA Compliance Clause and are the only parties entitled to enforce its terms. Except for the rights of Individuals, as defined herein, to access to and amendment of their Protected Health Information and Electronic Protected Health Information, and to an accounting of the uses and disclosures thereof, in accordance with Paragraphs (2)(f), (g) and (j), nothing in the HIPAA Compliance Clause gives, is intended to give, or shall be construed to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this HIPAA Compliance Clause.
- H.10.13.7** *Compliance with Applicable Law.* The Business Associate shall comply with all federal, District of Columbia laws, regulations, executive orders and ordinances, as they may be amended from time to time during the term of this HIPAA Compliance Clause and the Contract; to the extent they are applicable to this HIPAA Compliance Clause and the Contract.
- H.10.13.8** *Governing Law and Forum Selection.* This Contract shall be construed broadly to implement and comply with the requirements relating to the Privacy Rule, the Security Rule and other applicable laws and regulations. All other aspects of this Contract shall be governed under the laws of the District of Columbia. The Covered Entity and the Business Associate agree that all disputes which cannot be amicably resolved by the Covered Entity and the Business Associate regarding this HIPAA Compliance Clause shall be litigated before the District of Columbia Contract Appeals Board, the District of Columbia Court of Appeals, or the United States District Court for the District of Columbia having jurisdiction, as the case may be. The Covered Entity and the Business Associate expressly waive any and all rights to initiate litigation, arbitration, mediation, negotiations and/or similar proceedings outside the physical boundaries of the District of Columbia and expressly consent to the jurisdiction of the above tribunals.
- H.10.13.9** *Indemnification.* The Business Associate shall indemnify, hold harmless and defend the Covered Entity from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, breach of warranty or non-fulfillment of any undertaking of the Business Associate under this HIPAA Compliance Clause; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with the performance of the Business Associate under this HIPAA Compliance Clause.

H.10.13.10 *Injunctive Relief.* Notwithstanding any rights or remedies under this HIPAA Compliance Clause or provided by law, the Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate, its workforce, any of its subcontractors, agents, or any third party who has received Protected Health Information and Electronic Protected Health Information from the Business Associate.

H.10.13.11 *Assistance in litigation or administrative proceedings.* The Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or its workforce assisting the Business Associate in the fulfillment of its obligations under this HIPAA Compliance Clause and the Contract, available to the Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Covered Entity, its directors, officers or employees based upon claimed violation of HIPAA, the Privacy Rule, Electronic Protected Health Information or other laws relating to security and privacy, except where the Business Associate or its agents, affiliates, subsidiaries, subcontractors or its workforce are a named adverse party.

H.10.13.12 *Notices.* Any notices between the Parties or notices to be given under this HIPAA Compliance Clause shall be given in writing and delivered by personal courier delivery or overnight courier delivery, or by certified mail with return receipt requested, to the Business Associate or to the Covered Entity, to the addresses given for each Party below or to the address either Party hereafter gives to the other Party. Any notice, being addressed and mailed in the foregoing manner, shall be deemed given five (5) business days after mailing. Any notice delivered by personal courier delivery or overnight courier delivery shall be deemed given upon notice upon receipt.

If to the Business Associate, to

If to the Covered Entity, to

Attention:

Attention:

Fax: _____

Fax: _____

H.10.13.13 *Headings.* Headings are for convenience only and form no part of this HIPAA Compliance Clause and shall not affect its interpretation.

- H.10.13.14** *Counterparts; Facsimiles.* This HIPAA Compliance Clause may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.
- H.10.13.15** *Successors and Assigns.* The provisions of this HIPAA Compliance Clause shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns, if any.
- H.10.13.16** *Severance.* In the event that any provision of this HIPAA Compliance Clause is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this HIPAA Compliance Clause will remain in full force and effect. In addition, in the event a Party believes in good faith that any provision of this HIPAA Compliance Clause fails to comply with the then-current requirements of the Privacy Rule, such party shall notify the other Party in writing, in the manner set forth in Section 10. Miscellaneous, Paragraph l k. Notices. Within ten (10) business days from receipt of notice, the Parties shall address in good faith such concern and amend the terms of this HIPAA Compliance Clause, if necessary to bring it into compliance. If, after thirty (30) days, the HIPAA Compliance Clause fails to comply with the Privacy Rule and the Security Rule then either Party has the right to terminate this HIPAA Compliance Clause upon written notice to the other Party.
- H.10.13.17** *Independent Contractor.* The Business Associate will function as an independent contractor and shall not be considered an employee of the Covered Entity for any purpose. Nothing in this HIPAA Compliance Clause shall be interpreted as authorizing the Business Associate workforce, its subcontractor(s) or its agent(s) or employee(s) to act as an agent or representative for or on behalf of the Covered Entity.
- H.10.13.18** *Entire Agreement.* This HIPAA Compliance Clause, as may be amended from time to time pursuant to Section 10. Miscellaneous, Paragraph b. Amendment, which incorporates by reference the Contract, and specific procedures from the [insert agency name or abbreviation] Privacy Policy Operations Manual, constitutes the entire agreement and understanding between the Parties and supersedes all prior oral and written agreements and understandings between them with respect to applicable District of Columbia and federal laws, rules and regulations, HIPAA and the Privacy Rule and Security Rule, and any rules, regulations, requirements, rulings, interpretations, procedures, or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary.

H.11 DISTRICT RESPONSIBILITIES

The Government of the District of Columbia, through the COTR, will provide the following:

- H.11.1** A list of pharmacies to be included in the Contractor's centralized pharmacy network at the outset of the contract's period of performance.
- H.11.2** Provide continuous contract performance evaluations and program monitoring.
- H.11.3** Prepare any response or request for additional information or clarification from the Contractor as it pertains to the Contractor's compliance or noncompliance within ten (10) business days of submission of deliverables.
- H.11.4** The Contractor's the non-controlled substances will be replenished weekly by the DOH Pharmacy Warehouse based on dispensing information obtained from the Contractor's PBM for DC ADAP clients and from the MAA PBM for Medicaid covered clients, to determine the quantity and type of drugs to be replenished.
- H.11.5** The District will reimburse the Contractor for controlled substances dispensed to eligible clients as specified in C.3.
- H.11.6** HAA will conduct a readiness assessment and review prior to beginning of the operational phase of the contract.

**SECTION I
CONTRACT CLAUSES**

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

I.1.1 The Standard Contract Provisions for use with District of Columbia Government Supply and Services Contracts dated March 2007 (Attachment J.1) are incorporated as part of the contract resulting from this solicitation.

I.2 CONTRACTS THAT CROSS FISCAL YEARS

I.2.1 Continuation of the Contract beyond the fiscal year is contingent upon future fiscal appropriations.

I.2.2 Funds are not presently available for performance under the Contract beyond fiscal year 2008. The Government's obligation for performance of the Contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under the Contract beyond fiscal year 2008 until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

I.3 CONFIDENTIALITY OF INFORMATION

I.3.1 All information obtained by the Contractor relating to any employee of the District or customer of the District shall be kept in absolute confidence and shall not be used by the Contractor in connection with any other matters, nor shall any such information be disclosed to any other person, firm, or corporation, in accordance with the District and Federal laws governing the confidentiality of records.

I.4 TIME

I.4.1 Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

I.5 RIGHTS IN DATA

I.5.1 "Data," as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

- I.5.2** The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.
- I.5.3** The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
- I.5.4** The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- I.5.5** All data first produced in the performance of the Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under the Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.

I.5.6 The District shall have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of the Contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:

I.5.6.1 Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;

I.5.6.2 Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;

I.5.6.3 Copy computer programs for safekeeping (archives) or backup purposes; and

I.5.6.4 Modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.

I.5.7 The restricted rights set forth in Section I.5.6 are of no effect unless:

I.5.7.1 The data is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No. _____ With _____ (Contractor’s Name)

I.5.7.2 If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on the computer software indicating restrictions on the District’s rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.

- I.5.8** In addition to the rights granted in Section I.5.6 above, the Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section I.5.6 above, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the District under the Contract. Unless written approval of the contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the District under the Contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.
- I.5.9** Whenever any data, including computer software, are to be obtained from a subcontractor under the Contract, the Contractor shall use Section I.5 in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.
- I.5.10** For all computer software furnished to the District with the rights specified in Section I.5.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under the Contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by the court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under the Contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.
- I.5.11** The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under the Contract, or (ii) based upon any data furnished under the Contract, or based upon libelous or other unlawful matter contained in such data.
- I.5.12** Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.

I.5.13 Paragraphs I.5.6, I.5.7, I.5.8, and I.5.11 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work

I.6 OTHER CONTRACTORS

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District Contractor or by any District employee.

I.7 SUBCONTRACTS

I.7.1 The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior, written consent of the Contracting Officer. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District shall have the right to review and approve prior to its execution to the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of the Contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

I.7.2 Use subcontractors to provide the Health Care Ombudsman Program services, provided that subcontractors are advocacy organizations affiliated with health providers that exclusively represent the interests of consumers and do not represent a health care Contractor in any dispute. Regardless of whether Contractor utilizes subcontractors, Contractor shall maintain the ultimate responsibility for ensuring that all required obligations described are met.

I.8 INSURANCE

I.8.1 The Contractor shall obtain the minimum insurance coverage set forth below prior to award of the contract and within ten (10) calendar days after being called upon by the District to do so and keep such insurance in force throughout the contract period.

I.8.1.1 **Bodily Injury:** The Contractor shall carry bodily injury insurance coverage written in the comprehensive form of policy of at least \$500,000 per occurrence.

I.8.1.2 **Property Damage:** The Contractor shall carry property damage insurance of at least (\$100,000) per occurrence.

- I.8.1.3 Workers' Compensation:** The Contractor shall carry workers' compensation insurance covering all of its employees employed upon the premises and in connection with its other operations pertaining to the Contract, and the Contractor agrees to comply at all times with the provisions of the workers' compensation laws of the District.
- I.8.1.4 Employer's Liability:** The Contractor shall carry employer's liability coverage of at least one hundred thousand dollars (\$100,000).
- I.8.1.5 Automobile Liability:** The contractor shall maintain automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.
- I.8.1.6 Pharmacy Liability:**
- I.8.1.7** All insurance provided by the Contractor as required by this section, except comprehensive automobile liability insurance, shall set forth the District as an additional named insured. All insurance shall be written with responsible companies licensed by the District of Columbia's Department of Insurance and Securities Regulation with a certificate of insurance to be delivered to the District's Contracting Officer within fourteen (14) days of contract award. The policies of insurance shall provide for at least thirty (30) days written notice to the District prior to their termination or material alteration.
- I.9 ORDER OF PRECEDENCE**
- Any inconsistency in this solicitation shall be resolved by giving precedence in the following order: the Schedule A – H; Contract Clauses Section I; Attachments Section J; and Representations and Instructions Sections K.
- I.10 OPTION FOR TRANSITION SERVICES**
- I.10.1** The Contractor recognizes that the services provided under this contract are vital to the District of Columbia and must continue without interruption. In the event that either (a) the contract expires or (b) the District terminates the contract, and either or these events occur during the contract or more than 120 days prior to the end of the contract, the District can exercise the Option for Transition Services for a period of up to 120 days. In the event that the District exercises this Option for Transition Services, the Contractor shall agree to:

- a. Furnish phase-out, phase-in (transition) training;
- a. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- b. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval.
- c. The Contractor shall provide sufficient experienced personnel during the period of the Option for Transition Services to ensure that the services called for by this contract are maintained at the required level of proficiency.
- d. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-sit interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- e. The Contractor will be paid for Transition Services in accordance with the price Schedule in Section B.3, for a period of up to 120 days.

SECTION J
LIST OF ATTACHMENTS

| Attachment | Title |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| J.1 | Government of the District of Columbia Standard Contract Provisions for Use with the Supply and Service Contract, dated March 2007 |
| J.2 | U.S. Department of Labor Wage Determination No.2005-2103, Revision No. 5 dated May 8, 2008 |
| J.3 | HIPAA Privacy and Security Regulations |
| J.4 | District of Columbia Language Access Act |
| J.5 | Living Wage Act of 2008 Notice |
| J.6 | Living Wage Act of 2008 Fact Sheet |
| J.7 | Department of Health AIDS Drug Assistance Program (ADAP) Formulary |
| J.8 | Government of the District of Columbia Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85 |
| J.9 | Government of the District of Columbia Department of Employment Services First Source Employment Agreement |
| J.10 | Government of the District of Columbia Office of Tax and Revenue Tax Certification Affidavit |
| J.11 | Cost/Price Disclosure Certification |

**SECTION K
REPRESENTATIONS, CERTIFICATIONS AND
OTHER STATEMENTS OF BIDDERS**

K.1 TYPE OF BUSINESS ORGANIZATION

K.1.1 The bidder, by checking the applicable box, represents that

a. It operates as:

a corporation incorporated under the laws of the State of:

- an individual,
- a partnership,
- a nonprofit organization, or
- a joint venture.

b. If the bidder is a foreign entity, it operates as:

- an individual,
- a joint venture, or
- a corporation registered for business in _____
(Country)

K.2 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS

Mayor’s Order 85-85, “Compliance with Equal Opportunity Obligations in Contracts”, dated June 10, 1985 and the Office of Human Rights’ regulations, Chapter 11, “Equal Employment Opportunity Requirements in Contracts”, promulgated August 15, 1986 (4 DCMR Chapter 11, 33 DCR 4952) are included as a part of this solicitation and require the following certification for contracts subject to the order. Failure to complete the certification may result in rejection of the bidder for a contract subject to the order. I hereby certify that I am fully aware of the content of the Mayor’s Order 85-85 and the Office of Human Rights’ regulations, Chapter 11, and agree to comply with them in performance of this contract.

Bidder _____ Date _____

Name _____ Title _____

Signature _____

Bidder has has not participated in a previous contract or subcontract subject to the Mayor’s Order 85-85. Bidder has has not filed all required compliance reports, and representations indicating submission of required reports signed by proposed sub-bidders. (The above representations need not be submitted in connection with contracts or subcontracts which are exempt from the Mayor’s Order.)

K.3 BUY AMERICAN CERTIFICATION

The bidder hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in Paragraph 23 of the SCP, “Buy American Act”), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

_____ EXCLUDED END PRODUCTS
_____ COUNTRY OF ORIGIN

K.4 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION

Each Bidder shall check one of the following:

- No person listed in Clause 13 of the SCP, “District Employees Not To Benefit will benefit from this contract.
- The following person(s) listed in Clause 13 may benefit from this contract. For each person listed, attach the affidavit required by Clause 13 of the SCP.

K.5 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

K.5.1 Each signature of the bidder is considered to be a certification by the signatory that:

- a. The prices in this contract have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any bidder or competitor relating to:
 - 1. those prices
 - 2. the intention to submit a contract, or

3. the methods or factors used to calculate the prices in the contract.
- b. The prices in this Contract have not been and will not be knowingly disclosed by the Bidder, directly or indirectly, to any other Bidder or competitor before Contract opening unless otherwise required by law; and
- c. No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

K.5.2

Each signature on the bid is considered to be a certification by the signatory that the signatory:

- a. Is the person in the bidder's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs K.5.1 a - c; or
- b. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs K.5.1 a - c above:

(insert full name of person(s) in the organization responsible for determining the prices offered in this contract and the title of his or her position in the bidder's organization);

1. As an authorized agent, does certify that the principals named in subdivision K.5.2 b above have not participated, and will not participate, in any action contrary to subparagraphs K.5.1 a - c; and
2. As an agent, has not participated, and will not participate, in any action contrary to subparagraphs K.5.1 a - c above.
- c. If the bidder deletes or modifies subparagraph K.5.2 b above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

K.7**TAX CERTIFICATION**

Each bidder must submit with its bid, a sworn Tax Certification Affidavit, incorporated herein as Section J.10.

K.8 EMPLOYMENT AGREEMENT

For all bids over \$100,000, except for those in which the bidder is located outside the Washington Metropolitan Area and will perform no work in the Washington Metropolitan Area, the following certification is required (see Clause 28 of the Standard Contract Provisions). The Offeror recognizes that one of the primary goals of the District government is the creation of job opportunities for bona fide District residents. Accordingly, the Offeror agrees to pursue the District’s following goals for utilization of bona fide residents of the District of Columbia with respect to this contract and in compliance with Mayor’s Order 83-265 and implementing instructions:

- a. at least 51% of all jobs created as a result of this contract are to be performed by employees who are residents of the District of Columbia; and
- b. at least 51% of apprentices and trainees shall be residents of the District of Columbia registered in programs approved by the D.C. Apprenticeship Council. The Offeror also agrees to notify all prospective subcontractors, prior to execution of any contractual agreements, that the subcontractors are expected to implement Mayor’s Order 83-265 in their own employment practices. The Offeror understands and will comply with the requirements of The Volunteer Apprenticeship Act of 1978, D.C. official Code sec. 32-1401 et seq., and the First Source Employment Agreement Act of 1984, D.C. Code sec. 2-219.01 et seq.

The Offeror certifies that it intends to enter into a First Source Employment Agreement with the District of Columbia Department of Employment Services (DOES). Under this First Source Employment Agreement, the Offeror will use DOES as the first source for recruitment and referral of any new employees. The Offeror shall negotiate the First Source Employment Agreement directly with DOES. Nothing in this certification or the First Source Employment Agreement shall be construed as requiring the Offeror to hire or train persons it does not consider qualified based on standards the Offeror applies to all job applicants.

Name _____ Title _____

Signature _____ Date _____

K.9 CERTIFICATION REGARDING A DRUG-FREE WORKPLACE (JULY 1990)

K.9.1 Definitions. As used in this provision:

K.9.1.1 **Controlled substance:** means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

K.9.1.2 **Conviction:** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

K.9.1.3 **Criminal drug statute:** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

K.9.1.4 **Drug-free workplace:** means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

K.9.1.5 **Employee:** means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

K.9.1.6 **Individual:** means an Offeror/Contractor that has no more than one employee including the Offeror/Contractor.

K.9.2 By submission of its offer, the Offeror, if other than an individual, who is making an offer that equals or exceeds \$25,000, certifies and agrees, that with respect to all employees of the Offeror to be employed under a contract resulting from this solicitation, it will - no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration: or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed:

K.9.2.1 Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the

actions that will be taken against employees for violations of such prohibition;

- K.9.2.2** Establish an ongoing drug-free awareness program to inform such employees about the following:
 - K.9.2.2.1** The dangers of drug abuse in the workplace;
 - K.9.2.2.2** The Contractor's policy of maintaining a drug-free workplace;
 - K.9.2.2.3** Any available drug counseling, rehabilitation, and employee assistance programs; and
 - K.9.2.2.4** The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- K.9.2.3** Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph K.9.2.1 of this provision;
- K.9.2.4** Notify such employees in writing in the statement required by subparagraph K.9.2.1 of this provision that, as a condition of continued employment on the contract resulting from this solicitation, the employee will:
 - K.9.2.4.1** Abide by the terms of the statement; and
 - K.9.2.4.2** Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;
- K.9.2.5** Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision K.9.2.4 2 of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and
- K.9.2.6** Within 30 calendar days after receiving notice under subdivision K.9.2.4 2 of this provision of a conviction, takes one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - K.9.2.6.1** Take appropriate personnel action against such employee, up to and including termination; or
 - K.9.2.6.2** Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a

Federal, State, or local health, law enforcement, or other appropriate agency.

- K.9.2.7** Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs K.9.2.1 through K.9.2.6 of this provision.
- K.9.3** By submission of its offer, the Offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the Offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.
- K.9.4** Failure of the Offeror to provide the certification required by paragraphs K.9.2 through K.9.3 of this provision renders the Offeror unqualified and ineligible for award.
- K.9.5** In addition to other remedies available to the Government, the certification in paragraphs K.9.2 through K.9.3 of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 3001.

K.9.6 CERTIFICATION REGARDING A DRUG-FREE WORKPLACE

| | |
|----------------------------------------------|-------|
| | |
| Authorized Contractor Personnel (Print Name) | Title |
| | |
| Signature of Authorized Contractor Personnel | Date |

SECTION L
INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS

L.1 METHOD OF AWARD

L.1.1 The District reserves the right to accept/reject any/all bids resulting from this solicitation. The Contracting Officer may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.

L.1.2 The District intends, but is not obligated, to award a single contract resulting from this solicitation to the responsive and responsible bidder who has the lowest bid.

L.2 PREPARATION AND SUBMISSION OF BIDS

L.2.1 Bidders shall submit a signed original and five (5) copies. The District will not accept a facsimile copy of a bid as an original bid. All items accepted by the District, all pages of the Invitation for Bids (IFB), all attachments and all documents containing the bidder's offer shall constitute the formal contract. Each bid shall be submitted in a sealed envelope conspicuously marked:

**"Bid in Response to Solicitation No. DCHC-2008-B-0001
ADAP and Medicaid Programs Pharmacy Network Services"**

L.2.2 The original bid shall govern if there is a variance between the original bid and the copy submitted by the bidder. Each bidder shall return the complete solicitation as its bid.

L.2.3 The District may reject as non-responsive any bid that fails to conform in any material respect to the Invitation for Bids.

L.2.4 The District may also reject as non-responsive any bids submitted on forms not included in or required by the solicitation. Bidders shall make no changes to the requirements set forth in the solicitation.

L.3 FAMILIARIZATION WITH CONDITIONS (SERVICES)

Bidders shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties which may be encountered and the conditions under which the work is to be accomplished. Bidders will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to

their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

L.4 BID SUBMISSION DATE AND TIME

Bids must be submitted no later than 10:00 am July 11, 2008.

L.5 WITHDRAWAL OR MODIFICATION OF BIDS

A bidder may modify or withdraw its bid upon written, telegraphic notice, or facsimile transmission if received at the location designated in the solicitation for submission of bids, but not later than the exact time set for opening of bids.

L.6 LATE SUBMISSIONS, LATE MODIFICATIONS, AND LATE WITHDRAWALS

L.6.1 Bids, modifications to bids, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- a. The bid or modification was sent by registered or certified mail no later than the fifth (5th) day before the date specified for receipt of bids; or
- b. The bid or modification was sent by mail and it is determined by the Contracting Officer that the late receipt at the location specified in the solicitation was caused by mishandling by the District after receipt.

L.6.2 POSTMARKS

The only acceptable evidence to establish the date of a late bid, late modification or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification or withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown on the postmark, the bid shall be considered late unless the bidder can furnish evidence from the postal authorities of timely mailing.

L.6.3 LATE SUBMISSIONS

A late bid, late request for modification or late request for withdrawal shall not be considered, except as provided in this section.

L.6.4 LATE MODIFICATIONS

A late modification of a successful bid which makes its terms more favorable to the District will be considered at any time it is received and may be accepted.

L.6.5 LATE BIDS

A late bid, late modification or late withdrawal of a bid that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful bids resulting from this solicitation.

L.7 HAND DELIVERY OR MAILING OF BIDS

Bidders must deliver or mail their bids to the Office of Contracting and Procurement, 441 4th Street, NW Room 700 South Washington, DC 20001. Bidders will note

L.8 ERRORS IN BIDS

Bidders are expected to read and understand fully all information and requirements contained in the solicitation; failure to do so will be at the bidder's risk. In event of a discrepancy between the unit price and the total price, the unit price shall govern.

L.9 QUESTIONS ABOUT THE SOLICITATION

If a prospective bidder has any questions relative to this solicitation, the prospective bidder shall submit the questions in writing to the Contracting Officer. The prospective bidder shall submit questions no later than ten(10) days prior to the closing date and time indicated for this solicitation. The District will not consider any questions received less than ten (10) days before the date set for submission of bids. The District will furnish responses promptly to all other prospective bidders. An amendment to the solicitation will be issued, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to any other prospective bidders. Oral explanations or instructions given before the award of the contract will not be binding.

L.10 FAILURE TO SUBMIT BIDS

Recipients of this solicitation not responding with a bid should not return this solicitation. Instead, they should advise the Contracting Officer, James Marshall, Office of Contracting and Procurement, 441 4th Street, NW, Room 700 South, Washington, Dc 20001, phone number 202 724-4197 and fax 202 727-0245.

L.10.1 It is also requested that such recipients advise the Contracting Officer, James Marshall, Office of Contracting and Procurement of the reason for not submitting a bid in response to this solicitation. If a recipient does not submit a bid and does not notify the Contracting Officer, James Marshall, Office of Contracting and Procurement that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

L.11 BID PROTESTS

Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than 10 business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial bids shall be filed with the Board prior to bid opening or the time set for receipt of initial bids. In procurements in which bids are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested no later than the next closing time for receipt of bids following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 717 14th Street, N.W., Suite 430, Washington, D.C. 20004. The aggrieved person shall also mail a copy of the protest to the Contracting Officer.

L.12 SIGNING OF BIDS

L.12.1 The Contractor shall sign the bid and print or type its name on the Solicitation, Offer and Award form of this solicitation. Each bid must show a full business address and telephone number of the bidder and be signed by the person or persons legally authorized to sign contracts. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

L.12.2 All correspondence concerning the bid or resulting contract will be mailed to the address shown on the bid in the absence of written instructions from the

bidder or contractor to the contrary. Any bid submitted by a partnership must be signed with the partnership name by a general partner with authority to bind the partnership. Any bid submitted by a corporation must be signed with the name of the corporation followed by the signature and title of the person having authority to sign for the corporation. Bidders shall complete and sign all Representations, Certifications and Acknowledgments as appropriate. Failure to do so may result in a bid rejection.

L.13 ACKNOWLEDGMENT OF AMENDMENTS

The bidder shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section A.14 of the solicitation; or (c) by letter or telegram, including mailgrams. The District must receive the acknowledgment by the date and time specified for receipt of bids. Bidder's failure to acknowledge an amendment may result in rejection of the bid.

L.14 BIDS WITH OPTION YEARS

The bidder shall include option year prices in its price/cost bid. A bid may be determined to be unacceptable if it fails to include option year pricing.

L.15 LEGAL STATUS OF BIDDER

Each bid must provide the following information:

L.15.1 Name, address, telephone number and federal tax identification number of bidder;

L.15.2 A copy of each District of Columbia license, registration or certification that the bidder is required by law to obtain. This mandate also requires the bidder to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862 (2001), if the bidder is required by law to make such certification. If the bidder is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the bid shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

L.15.3 If the bidder is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

L.15.4 Bids submitted by a certified authorized agent for and on behalf of the primary manufacturer provided the bid shall include a notarized letter of authority from the primary manufacturer authorizing the designated agent to submit a bid for and on behalf of the primary manufacturer.

L.16 STANDARDS OF RESPONSIBILITY

The prospective contractor must demonstrate to the satisfaction of the District the capability in all respects to fully perform the contract requirements, therefore, the prospective contractor must submit the documentation listed below, within five (5) days of the request by the District.

L.16.1 Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.

L.16.2 Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.

L.16.3 Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them including:

- a. Licensing and regulatory approvals for the Contractor and the Contractor's centralized pharmacy network;
- b. Licensed Pharmacists
- c. Organizational Structure
- d. Policies and Procedures to provide the required services
- e. Management Information System to support the required service delivery and reporting requirements
- f. staff required

L.16.4 Evidence of compliance with the applicable District licensing and tax laws and regulations.

L.16.5 Evidence of a satisfactory performance record, record of integrity and business ethics.

L.16.6 Furnish evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.

L.16.7 Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

L.16.8

L.16.8.1**L.16.8.2****L.16.8.3**

L.16.9 If the prospective contractor fails to supply the information requested, the Contracting Officer shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the Contracting Officer shall determine the prospective contractor to be nonresponsible.

L.17 PRE-BID CONFERENCE

L.17.1 A pre-bid conference will be held at 2:00 pm June 24, 2008 at the Office of Contracting and Procurement, 441 4th Street, NW Room 700 South, Washington, DC 20001. Prospective bidders will be given an opportunity to ask questions regarding this solicitation at the conference. The purpose of the conference is to provide a structured and formal opportunity for the District to accept questions from bidders on the solicitation document as well as clarify the contents of the solicitation. Attending bidders must complete the Pre-Bid conference attendance roster at the conference so that bidder attendance can be properly recorded.

L.17.2 Impromptu questions will be permitted and spontaneous answers will be provided at the District's discretion. Verbal answers given at the Pre-Bid Conference are only intended for general discussion and do not represent the District's final position. All oral questions must be submitted in writing following the close of the pre-Bid Conference but no later than five working days after the Pre-Bid Conference in order to generate an official answer. Official answers will be provided in writing to all prospective bidders who are listed on the official bidder's list as having received a copy of the solicitation. Answers will be posted on the OCP website at www.ocp.dcgov.org.

**SECTION M
EVALUATION FACTORS**

M.1 PREFERENCES FOR LOCAL BUSINESSES, DISADVANTAGED BUSINESSES, RESIDENT-OWNED BUSINESSES, SMALL BUSINESSES, LONGTIME RESIDENT BUSINESSES, OR LOCAL BUSINESSES WITH PRINCIPAL OFFICES LOCATED IN AN ENTERPRISE ZONE

Under the provisions of the “Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005” (the Act), Title II, Subtitle N, of the “Fiscal Year 2006 Budget Support Act of 2005”, D.C. Law 16-33, effective October 20, 2005, the District shall apply preferences in evaluating bids or proposals from businesses that are small, local, disadvantaged, resident-owned, longtime resident, or local with a principal office located in an enterprise zone of the District of Columbia.

M.1.1 GENERAL PREFERENCES

For evaluation purposes, the allowable preferences under the Act for this procurement are as follows:

- M.1.1.1** Three percent reduction in the bid price or the addition of three points on a 100-point scale for a small business enterprise (SBE) certified by the Small and Local Business Opportunity Commission (SLBOC) or the Department of Small and Local Business Development (DSLBD), as applicable;
- M.1.1.2** Three percent reduction in the bid price or the addition of three points on a 100-point scale for a resident-owned business enterprise (ROB) certified by the SLBOC or the DSLBD, as applicable;
- M.1.1.3** Ten percent reduction in the bid price or the addition of ten points on a 100-point scale for a longtime resident business (LRB) certified by the SLBOC or the DSLBD, as applicable;
- M.1.1.4** Two percent reduction in the bid price or the addition of two points on a 100-point scale for a local business enterprise (LBE) certified by the SLBOC or the DSLBD, as applicable;
- M.1.1.5** Two percent reduction in the bid price or the addition of two points on a 100-point scale for a local business enterprise with its principal office located in an enterprise zone (DZE) and certified by the SLBOC or the DSLBD, as applicable; and

M.1.1.6 Two percent reduction in the bid price or the addition of two points on a 100-point scale for a disadvantaged business enterprise (DBE) certified by the SLBOC or the DSLBD, as applicable.

M.1.2 APPLICATION OF PREFERENCES

The preferences shall be applicable to prime contractors as follows:

M.1.2.1 Any prime contractor that is an SBE certified by the SLBOC or the DSLBD, as applicable, will receive a three percent (3%) reduction in the bid price for a bid submitted by the SBE in response to an Invitation for Bids (IFB) or the addition of three points on a 100-point scale added to the overall score for proposals submitted by the SBE in response to a Request for Proposals (RFP).

M.1.2.2 Any prime contractor that is an ROB certified by the SLBOC or the DSLBD, as applicable, will receive a three percent (3%) reduction in the bid price for a bid submitted by the ROB in response to an IFB or the addition of three points on a 100-point scale added to the overall score for proposals submitted by the ROB in response to an RFP.

M.1.2.3 Any prime contractor that is an LRB certified by the SLBOC or the DSLBD, as applicable, will receive a ten percent (10%) reduction in the bid price for a bid submitted by the LRB in response to an IFB or the addition of ten points on a 100-point scale added to the overall score for proposals submitted by the LRB in response to an RFP.

M.1.2.4 Any prime contractor that is an LBE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the LBE in response to an IFB or the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LBE in response to an RFP.

M.1.2.5 Any prime contractor that is a DZE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the DZE in response to an IFB or the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DZE in response to an RFP.

M.1.2.6 Any prime contractor that is a DBE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the DBE in response to an IFB or the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DBE in response to an RFP.

M.1.3 MAXIMUM PREFERENCE AWARDED

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act for this procurement is twelve percent (12%) for bids submitted in response to an IFB or the equivalent of twelve (12) points on a 100-point scale for proposals submitted in response to an RFP. There will be no preference awarded for subcontracting by the prime contractor with certified business enterprises.

M.1.4 PREFERENCES FOR CERTIFIED JOINT VENTURES

When the SLBOC or the DSLBD, as applicable, certifies a joint venture, the certified joint venture will receive preferences as a prime contractor for categories in which the joint venture and the certified joint venture partner are certified, subject to the maximum preference limitation set forth in the preceding paragraph.

M.1.5 VENDOR SUBMISSION FOR PREFERENCES

M.1.5.1 Any vendor seeking to receive preferences on this solicitation must submit at the time of, and as part of its bid or proposal, the following documentation, as applicable to the preference being sought:

M.1.5.1.1 Evidence of the vendor's or joint venture's certification by the SLBOC as an SBE, LBE, DBE, DZE, LRB, or RBO, to include a copy of all relevant letters of certification from the SLBOC; or

M.1.5.1.2 Evidence of the vendor's or joint venture's provisional certification by the DSLBD as an SBE, LBE, DBE, DZE, LRB, or RBO, to include a copy of the provisional certification from the DSLBD.

M.1.5.2 Any vendor seeking certification or provisional certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development
ATTN: LSDBE Certification Program
441 Fourth Street, N.W., Suite 970N
Washington, DC 20001

M.1.5.3 All vendors are encouraged to contact the DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

M.2 EVALUATION OF OPTION YEARS

The District will evaluate bids for award purposes by evaluating the total price for all options as well as the base year. Evaluation of options shall not obligate the District to exercise them. The total District's requirements may change during the option years. Quantities to be awarded will be determined at the time each option is exercised.